

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/14-01/18

Date: 8 April 2020

TRIAL CHAMBER V

Before: Judge Bertrand Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
THE PROSECUTOR *v.* ALFRED YEKATOM AND PATRICE-EDOUARD
NGAÏSSONA**

Public

**With Confidential *EX PARTE* Annex I only available to the Office of the
Prosecutor, Confidential *EX PARTE* Annexes II and III only available to the
Registry, and a Confidential redacted version of Annex III**

Registry Submissions in View of the upcoming Status Conference

Source: Registry

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

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I. Introduction

1. Pursuant to the “Order Scheduling First Status Conference” (“Order”) issued by Trial Chamber V (“Chamber”) on 19 March 2020, as well as the “Order Deferring the First Status Conference” issued on 26 March 2020, the Registry submits its views on issues of (1) languages to be used by the parties, participants, and the witnesses the parties intend to call, (2) protective measures of witnesses, and (3) additional applications by victims to participate in the proceedings.¹

II. Classification

2. In accordance with regulation 23 *bis* (1) of the Regulations of the Court (“RoC”), Annex I to the present submissions is classified confidential *ex parte* only available to the Office of the Prosecutor (“Prosecution”), as it refers to personal and case-specific information regarding potential witnesses, as well as to the internal operations of the Court. Annexes II and III are classified confidential *ex parte* only available to the Registry because they contain sensitive information pertaining to victims. A confidential redacted version of Annex III is also submitted for the parties.

III. Applicable law

3. The following provisions are of particular relevance to the present submissions: articles 43, 50, 67(1)(a), 68, 87(2) of the Rome Statute (“Statute”), rules 16 to 19, 87 and 88 of the Rules of Procedure and Evidence (“Rules”), regulations 27, 39(1), 40, 41 of the RoC, and regulations 57(1), 58(3), 61, 64(7), 66, 67, 68(4), 69, and 80 to 96 of the Regulations of the Registry (“RoR”).

¹ Trial Chamber V, “Order Scheduling First Status Conference”, 19 March 2020, ICC-01/14-01/18-459, para. 3; Trial Chamber V, “Order Deferring the First Status Conference”, 26 March 2020, ICC-01/14-01/18-464.

IV. Submissions

Language Issues

Transcription and Translation/Interpretation

4. As to transcription, the Registry, through the Court Management Section (“CMS”), will provide the Chamber, parties and participants with the real-time transcripts of the proceedings in English and French, based on the original speech and on the simultaneous interpretation effected by interpreters within the Language and Services Section (“LSS”). The edited versions of the transcripts in both languages will be provided to all parties and participants by CMS.
5. As to the languages other than French and English to be used at trial, namely the “situation languages”, the Registry, through LSS, will provide the following services, provided that the travel ban is lifted and the freelancers can travel to the duty station:

Sango for Mr Yekatom

6. Four Sango speaking court interpreters will be recruited to provide simultaneous interpretation for the duration of the trial. In accordance with Mr Yekatom’s statutory right under article 67 of the Statute, they will provide simultaneous Sango interpretation for him, as well as during the testimony of Sango speaking witnesses.

Anticipated situation languages of the witnesses

7. It is anticipated that operational interpretation will be required for Sango speaking witnesses at Headquarters before, during and after their testimony. LSS could support standard Arabic for Arabic speaking witnesses if needed. At this time there is no concrete information about other relevant situation language requirements. However, if any other situation languages than Sango need to be supported, including local varieties of Arabic or Peul, LSS needs to be officially informed at least 6 months in advance to source, recruit, accredit and train field interpreters in any of these languages for deployment at Headquarters to provide consecutive interpretation when required.

Protective measures for witnesses

8. The Victims and Witnesses Unit ("VWU" or "Unit") provides in the below paragraphs general information on the different protective measures that the Unit can implement for the benefit of persons at risk. It must be noted that the current fast-changing situation arising from the COVID-19 pandemic will affect the Unit's ability to implement some or all of the different protective measures detailed below. In addition to this general information, case-specific information is annexed on an *ex parte* basis, only available to the Prosecution.
9. Pursuant to articles 68(4) and 43(6) of the Statute, the VWU provides its assessment and recommendations to the Chamber on the security and related in-court protection measures witnesses may need in accordance with rule 87 of the Rules. The Unit may also implement non-procedural protective measures. These measures depend on the level of risk incurred by the witness concerned and range from the implementation of good practices to the set-up of an Immediate Response System, an assisted move, an internal resettlement within the relevant country or an international relocation. Internal resettlement and international relocation both require an inclusion of the witnesses into the Court's protection program ("ICCPP"). For international relocations, the Court needs the cooperation of the relevant partner States that have signed a relocation agreement with the Registry or accepted to relocate witnesses on their territory on an *ad hoc* basis.
10. The admission of a witness in the ICCPP is a voluntary measure of last resort. Considering the extremely heavy impact an inclusion in the ICCPP has on the life of a person and his family members, the VWU always strikes a balance between the intrusiveness of the protection measure and the risk and/or threat that the individual may face. This measure is only applied where no alternative protection measure exists and when a person is considered to be severely at risk. An inclusion in the ICCPP also requires that the persons be assessed as suitable for that program from a psychological viewpoint.

Protection referrals

11. The Unit encourages the parties and participants to follow the procedure established in regulations 80(1) and 96(2) of the RoR for any issues concerning the protection of witnesses, victim referrals to the ICCPP, or other forms of protection. Upon receipt of a referral for protection, the Unit will perform a threat and risk assessment of the security situation of the referred individual. For the purpose of assessment and recommendation of the appropriate protective measures, the VWU would like to stress that it is essential that the parties provide the Unit with specific information on the nature of the threat or risk the individual could be exposed to. The Unit remains available to assist the parties in that regard and provide them with a protection referral form to facilitate any request.

Familiarisation Protocol

12. The Registry informs the Chamber that prior to a witness testifying, the VWU is generally required to carry out a witness familiarisation procedure. In this respect, the Unit recommends the adoption of a "Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial" ("Familiarisation Protocol"), which outlines the procedures that serve the best interests of witnesses and provide for sustainable working solutions for all entities involved. The Familiarisation Protocol covers issues pertinent to the familiarisation process, taking into account the practices and experiences concerning witnesses appearing before the Court and matters relating to, *inter alia*, travel preparations of the witnesses in the field, arrangements for witnesses falling under the scope of rule 74 of the Rules, and courtroom familiarisation.
13. Subject to the approach of the Chamber in the present case, the Unit informs the Chamber that different versions of Familiarisation Protocols were adopted for two different scenarios. In the case of *The Prosecutor v. Dominic Ongwen*

("Ongwen Case"), the Chamber adopted, with minor amendments, the same Familiarisation Protocol as the one adopted in the cases of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* ("Gbagbo and Blé Goudé Case") and *The Prosecutor v. Jean-Pierre Bemba Gombo et al.* ("Bemba Case"). The Chambers in these cases did not opt for the preparation of witnesses. As a result, in the Ongwen and Gbagbo and Blé Goudé Cases, due to the absence of a Witness Preparation Protocol, the VWU was the entity conducting the exercise of the statement reading with the respective witnesses.

14. A different version of the Familiarisation Protocol was recently adopted in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* ("Al Hassan Case").² The Chamber in the Al Hassan Case adopted an amended version of the Familiarisation Protocol previously filed in the case of *The Prosecutor v. Bosco Ntaganda* ("Ntaganda Case"), which mirrors the two previous Familiarisation Protocols respectively filed in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* and *The Prosecutor v. Uhuru Muigai Kenyatta* ("Kenya Cases"). Unlike the Familiarisation Protocol adopted in the Ongwen Case, these protocols take into consideration the fact that a Witness Preparation Protocol was adopted.

15. The Registry recommends the adoption of the latest version of one of the two Familiarisation Protocols (the one adopted in the Ongwen Case³ or the one adopted in the Al Hassan Case⁴) in order to promote a uniform practice of management of witnesses appearing before the Court. The Registry stands ready to provide the present Chamber with the Familiarisation Protocol for the two above-mentioned different scenarios.

² Trial Chamber X, "Decision on witness preparation and familiarisation", 17 March 2020, ICC-01/12-01/18-666.

³ Trial Chamber IX, "Decision on Protocols to be Adopted at Trial", 22 July 2016, ICC-02/04-01/15-504-Anx1.

⁴ Registry, "Registry's Submissions on the Protocol on the practices to be used to familiarise witnesses for giving testimony at trial pursuant to "Decision on witness preparation and familiarisation" (ICC-01/12-01/18-666)", 31 March 2020, ICC-01/12-01/18-705-AnxI.

Vulnerability Protocol

16. The Registry also informs the Chamber that in accordance with rule 88 of the Rules, the Unit, upon the Chamber's request, will provide 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" ("Vulnerability Protocol"), which was adopted in the Bemba, Kenya, Ntaganda and Gbagbo and Blé Goudé Cases. This is the single version of the Vulnerability Protocol adopted before the Court. Therefore, in order to maintain this uniform practice, the VWU would recommend adopting the same protocol in the present case subject to minor terminology amendments. The VWU stands ready to provide the present Chamber with the Vulnerability Protocol, including the necessary minor terminology amendments.

Other Protocols

17. If the parties and participants call dual status witnesses, the Unit informs the Chamber of the "Mechanism for exchange of information on individuals enjoying dual status ("Protocol")" which was adopted in the Al Hassan case.⁵ The Registry stands ready to provide the Chamber with any necessary information in relation to all the aforementioned Protocols.

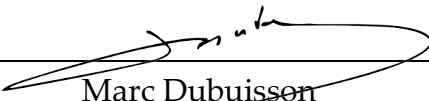
Victim Participation

18. The Registry makes submissions on victim participation in Annex III to the present submissions.

⁵ Trial Chamber X, "Decision on the 'Protocol on the handling of confidential information during investigations and contact between a party or participant and witnesses of the opposing party or of a participant', the 'Dual Status Witness Protocol', and related matters", 19 March 2020, ICC-01/12-01/18-674-Anx1.

Further Submissions

19. Should the COVID-19 pandemic require the continuation of the current measures in the coming months, the Registry stands ready to submit a feasibility assessment should the Chamber wish to hold the status conference remotely.



Marc Dubuisson
Director Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 8 April 2020

At The Hague, the Netherlands