

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 March 2015

TRIAL CHAMBER I

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

*SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASES OF
THE PROSECUTOR v. LAURENT GBAGBO
AND
THE PROSECUTOR v. CHARLES BLÉ GOUDÉ*

PUBLIC

**Victims and Witnesses Unit's submission pursuant to
Order ICC-02/11-01/11-807**

Source: The Registry

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

The Office of the Prosecutor

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

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

NOTING the “Joint submission of the Prosecution and the Legal Representative of Victims on the proposed familiarisation protocol” filed on 26 February 2015;¹

NOTING the “Soumissions de la Défense relatives à l’adoption du Protocole pratique de familiarisation des témoins en vue de leur déposition ” (the “Defence submission”) filed on 27 February 2015 by the Defence of Mr Laurent Gbagbo (the « Defence »);²

NOTING the “Victims and Witnesses Unit’s submission on the Protocol on the practices to be used to familiarise witnesses for giving testimony pursuant to Order ICC-02/11-01/11-739” (the “VWU Submission”) filed on 27 February 2015;³

NOTING the “Victims and Witnesses Unit's submission on the Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses pursuant to Order ICC-02/11-01/11-739” (the “VWU submission on the Vulnerability Protocol”) filed on 27 February 2015;⁴

NOTING the “Decision on Requests for an extension of time to submit observations on the outstanding protocols” issued by the Chamber on 4 March 2015;⁵

¹ ICC-02/11-01/11-783

² ICC-02/11-01/11-786 + Conf-Anx

³ ICC-02/11-01/11-791 + Anx1.

⁴ ICC-02/11-01/11-789.

⁵ ICC-02/11-01/11-796

NOTING the “Victims and Witnesses Unit’s submission pursuant to Order ICC-02/11-01/11-796” filed on 6 March 2015;⁶

NOTING the « Soumissions de la Défense portant sur l’adoption du Protocole relatif à la procédure suivie pour évaluer la vulnérabilité des témoins et leur apporter le soutien requis pour faciliter leur déposition » filed on 6 March 2015 by the Defence;⁷

NOTING the “Decision authorising the VWU to make additional observations on the Familiarisation Protocol” issued by the Chamber on 10 March 2015;⁸

NOTING articles 43(6), 44(2) and 68(1) and (4) of the Rome Statute, rules 16 to 19 of the Rules of Procedure and Evidence, and regulations 79 to 96 of the Regulations of the Registry (the “RoR”);

RESPECTFULLY SUBMITS the “Victims and Witnesses Unit’s submission pursuant to Order ICC-02/11-01/11-807”:

1. The VWU is of the view that the Defence submission raises new substantial and significant issues in relation to the Familiarisation Protocol regarding the familiarisation activities conducted by the VWU which need to be addressed in the present submission in order to ensure that the services provided by the Unit remain neutral and impartial.

A. Amendments proposed by the Defence on the vulnerability issues addressed in the proposed Familiarisation Protocol

⁶ ICC-02/11-01/11-799.

⁷ ICC-02/11-01/11-803-Conf.

⁸ ICC-02/11-01/11-807

2. The Defence includes in its submission numerous comments on the paragraphs of the Familiarisation Protocol related to the assistance provided by the Unit to vulnerable witnesses. The VWU would like to stress that most of the concerns raised by the Defence have already been addressed through the VWU's submission on the Vulnerability Protocol. The observations below aim at reiterating and strengthening VWU's position in that regard.
3. In paragraphs 21, 46 to 49 and 85, the Defence seems to call into question the mandate and expertise of the VWU in its dealing with vulnerable witnesses. The VWU would like to remind that the Unit is a neutral service provider to all parties and primarily focuses on protecting the best interest of the witness and facilitate proceedings in a neutral manner. The Chamber is then provided with a neutral and impartial advice on the best way to protect a vulnerable witness' well-being during his/her testimony. The VWU psychologists do have a particular professional and clinical expertise allowing them to formulate psychological diagnosis, hereby respecting the ethical and deontological rules of their profession. The focus of the assessments carried out by VWU psychologists lies on the prevention of re-traumatisation by the court process and on the facilitation of testimony as stipulated in the existing Vulnerability Protocol.
4. The VWU would like to clarify that the intervention of the Unit is not in any case directed to assess the credibility of the witness. The support that is provided by the representative of the Unit is only aimed to provide all the necessary support to the witness' well-being in order to facilitate his/her testimony before the Court.
5. In its assessment procedure the VWU applies a rigorous consent procedure, leaving a vulnerable witness the free choice to opt out from an assessment, this without affecting in any way his or her relationship with the calling party. In addition the VWU would like to point out that, since not all vulnerable witnesses are aware of the possibility to request special measures, it is the VWU's duty to offer an assessment to all witnesses identified as vulnerable,

without discrimination and irrespective of any other motives related to the case.

6. The VWU usually recommends special measures based on the non-exhaustive list of measures listed in the Vulnerability Protocol. Measures can be adapted to the needs of the witness and new measures could be proposed if needed. It is ultimately for the Chamber to decide on the use of the measures proposed for the benefit of the witness taking into consideration the rights of the Defence. Any objections to the proposed measures in Court should be then, in the VWU's opinion, addressed to the Chamber. In addition, measures proposing an adaptation of the questioning can be used as guidance to the parties and the Chamber, who decides on how to implement them. It is ultimately the Chambers' role to control the manner of questioning.²
7. For the above mentioned reasons, the VWU is of the view that the amendment suggested by the Defence to paragraphs 21, 46 to 49 and 85 which all contradict the spirit of VWU's mandate and activities in relation to vulnerable witnesses should not be adopted.

B. Amendments proposed by the Defence on the role of the calling party during the familiarisation process

8. The VWU is of the view that its mandate relating to the familiarisation of witnesses may need to be further explained to the Defence for a full understanding of its mission. The Unit stands ready to provide any additional information to the Defence to what is provided below.
9. First of all, the VWU would like to stress that it is the Unit constant practice to answer in writing to any written question submitted to the Unit. The proposed amendment to paragraph 12 requesting expressly a written answer from the VWU to a request is therefore unnecessary.
10. In Paragraph 4 the Defence points out that it will not be possible for the Defence team to be present in the field to introduce their witnesses to the VWU.

The Unit would like to stress that when the Defence cannot attend the required introduction meeting, witnesses can be introduced to the VWU through a telephone call made by the Defence, at its convenience. There is no requirement for the Defence to be physically present for the introduction. Such introduction is necessary to provide a guarantee that the individual is indeed the Defence witness and not somebody who pretends being this person.

11. Regarding the in-court reading assistance, it goes without saying that the expert evaluation made by the VWU is done following consultation on the matter with the calling party. The evaluation process however is conducted by the Unit only. The Unit always keeps the calling party duly informed of the outcome of its assessment. The amendments to paragraphs 52 and 54 made by the Defence are therefore not justified.
12. In paragraph 67 the Defence suggests that the familiarisation procedure should be conducted in consultation with the calling party. The VWU would like to clarify that familiarisation process is part of the mandate of the Unit and is not conducted in consultation with the calling party. The calling party is only invited to attend as an observer. The in-court familiarisation being conducted shortly before the appearance, the involvement of the calling party should indeed be limited to avoid any undue interference.
13. In paragraphs 72 to 77 the Defence does not seem to consider that the courtesy meetings are necessary nor beneficial and stresses that it might be a time consuming process which may put the witness in an uncomfortable situation. The Unit would like to emphasize that courtesy meetings have proven to be beneficial to the witnesses in acquainting themselves with the persons who will be interacting with them in the courtroom. In addition, the VWU would like to point out that it is not mandatory for the Defence to attend the courtesy meetings.
14. In paragraphs 89 and 90 the Defence seems to challenge the expertise and assistance provided by the VWU after the testimony of the witness. The Unit would like to underline that this practice has proven to be beneficial to the

well-being of the witnesses and should expressly be mentioned in the Protocol as it supports the need to conduct post testimony assessments.

15. In paragraph 91 the Defence raises some concerns regarding the inference between the Unit and the witness. The VWU wants to clarify that the Unit is not interfering with the testimony of the witnesses during the post-testimony assessment. Only issues which may impact on the implementation of protective measures are considered by the Unit in its assessment.
16. In paragraph 92 the Defence requests to be provided with the security questionnaire. The VWU clarifies that it only transmits a report to the calling party and does not transmit the security questionnaire itself.
17. The Defence requests in paragraph 93 to be informed about the follow-up support measures required during the cooling down period. The VWU would like to point out that the calling party is always informed of any measure suggested through the communication of a post-testimony report.
18. For the above mentioned reasons, the VWU is of the view that the amendment suggested by the Defence to paragraphs 4, 12 , 52, 54, 67, 72 to 77, 89, 90, 91, 92 and 93 should not be adopted.

C. Amendments proposed by the Defence in relation to the mandate of the VWU regarding the protection of witnesses

19. Some of the amendments or comments provided by the Defence are related to the protection duty of the VWU. The Unit deems necessary to provide its comments below for a better understanding of its general mandate. In addition to this, the Unit is ready to discuss in more details its processes in relation to the Protection services it offers to the witnesses with the Defence.
20. The Defence states in Paragraphs 7 and 8 that the intervention of the Unit to support witnesses in order to assist them to obtain their travel documents from the authorities may be prejudicial to their security. The Defence also stresses

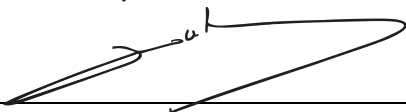
that the Unit should be in charge of the security of the witnesses from that stage until the end of the proceedings due to the limited means of the Defence to ensure their security. The VWU considers that the way it operates to obtain travel documents is not prejudicial to the security of the witnesses as it does not expose them in front of the authorities. In addition, the Unit would like to remind that the VWU is not automatically responsible for the security of any witnesses in the absence of a protection referral submitted by a calling party or a representative of victims. In this respect, if the Defence is in possession of any information regarding potential threats to the security of its witnesses, the VWU is willing to receive such information in accordance with the procedure established in regulations 80(1) and 96(2) of the Regulations of the Registry for any issues concerning the protection of witnesses and referrals to the Court's witness protection program. The VWU is of the view therefore that the paragraphs should be adopted without amendment.

21. In paragraph 39 the Defence raises some security concerns regarding the VWU staff members being in charge of escorting and taking care of the witnesses and on the accommodation chosen by the VWU to host witnesses. The VWU would like to remind that the VWU staffs are professionals fulfilling the requirements of article 44(2) of the Rome Statute and that a security vetting procedure is conducted by the Court as part of their recruitments process. In addition, the VWU would like to highlight that witnesses are always accommodated in a secured accommodation.
22. For the above mentioned reasons, the VWU is of the view that the amendment suggested by the Defence to paragraphs 7, 8 and 39 should not be adopted.

Conclusion

23. The VWU wishes to underline that the assistance provided by the Unit to witnesses during the familiarisation procedure as well as the specific expertise regarding vulnerable witnesses and the protection of individuals has proven to

be beneficial to all the witnesses and victims whose appearance have been facilitated by the Unit. For the reasons explained in the present submission the VWU takes the view that none of the amendments proposed by the Defence is justified or necessary. Furthermore, the adoption of the existing version of the Familiarisation Protocol as submitted by the Unit would guarantee a uniform practice and an equal treatment of all witnesses appearing before the Court.



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

Dated this 13 March 2015

At The Hague, the Netherlands