

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-02/11-01/11
Date: 27 February 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 CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

**PUBLIC
With one public Annex**

**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**

Source: The Registry

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 the Defence

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

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 Massida

**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

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

NOTING the “Registry's Observations on the "Order scheduling a status conference and setting a provisional agenda” (ICC-02/11-01/11-692)” filed by the Registry on 27 October 2014;¹

NOTING the “Order setting deadlines for the filing of submissions on outstanding protocols” issued by Trial Chamber I” (the “Chamber”) on 18 December 2014;²

NOTING the “Joint submission of the Prosecution and the Legal Representative of Victims on the proposed familiarisation protocol” filed on 26 February 2015;³

NOTING articles 43(6) 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;

NOTING the “Victims and Witnesses Unit’s submission of “Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony” (the “Familiarisation Protocol”) which was filed by the VWU on 16 April 2012 upon instruction of Pre-Trial Chamber I;⁴

CONSIDERING that the Chamber directed “the Prosecution, the Defence, the LRVs and the VWU to file their submissions, if any, on the draft familiarisation Protocol no later than 27 February 2015”;

¹ ICC-02/11-01/11-705.

² ICC-02/11-01/11-739.

³ ICC-02/11-01/11-783

⁴ ICC-02/11-01/11-93-Anx1.

CONSIDERING that the Office of the Prosecutor proposed to amend the paragraphs 24 and 39 of the familiarisation Protocol and that this proposal was supported by the Legal representative;⁵

CONSDERING that the VWU further informed the Office of the Prosecutor and the Legal Representative that the Unit would therefore file the amended version of the familiarisation protocol that was filed in the *Ntaganda* case;⁶

RESPECTFULLY SUBMITS 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- ICC-02/11-01/11-739 and the VWU's proposed version of the familiarisation protocol as annex 1 to the present submission:

1. The Prosecution, the Legal Representative and the VWU agreed on the amendments of paragraph 21 and of paragraphs 61 to 67 of the annexed document. Paragraph 21 was amended in order to include that the VWU will, in addition to the Chamber, also raise with the calling parties and the legal representative, when applicable, any specific concerns regarding the integrity and well-being of a witness, especially in relation to those who may be traumatised or vulnerable. Paragraphs 61 to 67 were amended in order to reflect the new practice of the Registry regarding the legal assistance that is provided under rule 74 of the Rules of Procedure and Evidence. The term of duty counsel is replaced by legal adviser, the reference to the list of counsel and external counsel is removed as well as the paragraph related to the costs and allowance.
2. The point of disagreement between the Prosecution, the Legal Representative and the VWU is related to the joint travel of witnesses while they are travelling

⁵ Emails sent on 23 February 2015 to the VWU by the Prosecution at 15h22 and from the Legal Representative at 15h34.

⁶ Email from the VWU sent on 23 February 2015 at 16h55.

to the seat of the Court and their joint accommodation at the location of testimony.

I. Dispositions of the current familiarisation protocol

3. The practice foreseen in the protocol filed in the Bemba case and which also applies to Kenya 1 case is that witnesses are travelling and are accommodated jointly, whenever possible. This principle does not apply when the witnesses participate in the Court's Protection Programme or are otherwise protected or when the witnesses do not know each other and are not aware of each other status as witnesses before the Court. As such, this practice ensures that the anonymity of the witnesses is preserved.
4. The Protocol stipulates that this practise of having witnesses travelling and accommodated jointly whenever possible has been recognised by the VWU to be beneficial for the well-being of witnesses who feel less anxious to travel with other witnesses they already know and who experience less isolation and boredom when accommodated with people from the same cultural background.
5. The text also foresees that the Unit always reminds witnesses with regularity that they must not discuss their impending evidence with each other and of their role in preserving evidence and in avoiding unnecessary disclosure. This message is conveyed to the witnesses by the VWU throughout the familiarisation procedure.

II. The points of disagreement between the parties

6. In its email the Prosecutor has proposed that paragraphs 24 and 39 related to the travel and accommodation of the witnesses be amended to read as follows:

“The VWU shall arrange for witnesses to travel separately at the location of testimony. In exceptional circumstances and after prior notice to the parties and the participant, and approval of the Chamber, witnesses may travel jointly if, in the VWU’s

assessment, their particular vulnerable situation so requires. VWU shall communicate the reasons for its recommendation in its notice to the parties, participants and Chamber”.

“The VWU shall arrange for witnesses to be accommodated separately at the location of testimony. In exceptional circumstances and after prior notice to the parties and the participant, and approval of the Chamber, witnesses may be accommodated jointly if, in the VWU’s assessment, their particular vulnerable situation so requires. VWU shall communicate the reasons for its recommendation in its notice to the parties, participants and Chamber”.

II. Comments of the VWU


7. The Unit is of the view that the current practice of joint travel and joint accommodation *whenever this is possible* [emphasize added] should not be presented as an exception, subject to the approval of the Chamber. Based on its assessment, experience and regular consultation with the parties, the VWU does not in any case ever travel or accommodate jointly witnesses whose testimony may become contaminated and whose anonymity regarding their interaction with the Court would be compromised. The Unit also never travels and accommodates jointly witnesses when it would be prejudicial to the protective measures granted to the witnesses.
8. In practice, witnesses who travel together and are jointly accommodated are either part of the same family or already live together, know themselves and are already aware of their respective status as witnesses before the Court. This information is collected during the VWU’s interaction with the witnesses or is communicated by the parties to the VWU. It would therefore not appear valuable to separate witnesses who have always been in contact or even live together just for their travels to the seat of the Court and not to further accommodate them together in the place of their testimony. Preventing witnesses who know each other and can meet at any time before or after their travel to the Court from travelling together would have no impact on the

prevention of witness contamination, as such contamination, if it was to occur, could take place at any time outside their period of travel and stay at the location of testimony. This measure would thus only cause additional stress and hardship to the witnesses, without any benefit for the interests of justice. Quite the opposite, increasing hardship for witnesses is likely to impact adversely on the witness' capacity to appear, which would not be in the interests of justice. The Unit would like to remind that in any case, witnesses will always be separated from each other when they will start testifying before the Court.

9. In addition, the Unit considers that although joint travel and accommodation is particularly beneficial for vulnerable witnesses, it can be beneficial to all witnesses as it increases a general sense of well-being. While this joint accommodation or travel presents undeniable logistical advantage and is consistent with the efficient use of the Court's resources allocated by the Assembly of States Parties, it also serves one of the main goals of the VWU as it increases the well-being of witnesses in order to facilitate testimony. The proposition of the parties to limit the joint travel and accommodation to vulnerable witnesses would be too restrictive and would prevent a case by case analysis of the VWU.
10. The Unit is of the view that the current practice of the VWU together with the appropriate safeguards applied by the Unit, such as the presence of a VWU staff and the reminder to witnesses that they should not discuss their evidence, does not as such pose any additional risk of witness tampering or create any interference or influence among the witnesses that would be prejudicial to the fair conduct of the proceedings.
11. Therefore the Unit does not see any reasons to deviate from this practice. The Unit is of the view that the need for witnesses to be separated during travel and accommodated separately at the location of the testimony should be subject of ongoing preparatory discussion and should only be addressed to the Chamber in case of contention between the calling party and the VWU.

III. The VWU's proposed amendments

12. The proposed amended version of paragraphs 24 and 40 stipulates that the calling party is always consulted and that a discussion is taking place at the beginning of the trial and in the course of witnesses' appearance. The calling party will then have an opportunity to address its specific concerns to the VWU regarding a potential contamination of the witnesses testimonies and to bring to the Unit's attention any information that the Unit may not be aware of that would prevent a joint travel and accommodation.
13. In addition, the amended text makes it clear that only witnesses who are not participating in the Court Protection Programme and who are aware of their respective interaction with the Court may be offered to travel or be accommodated jointly.
14. Lastly, the VWU has also amended the text to foresee that in case where no agreement can be reached with the calling party, the Chamber is seized of the matter. The VWU is of the view that this issue should first be discussed with the calling party and that the Chamber should only be consulted in case of unsolvable disagreement.



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

Dated this 27 February 2015

At The Hague, The Netherlands