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TRIAL CHAMBER I

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

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. CHARLES BLÉ GOUDÉ***

Public

Submissions in accordance with the “Order scheduling a status conference and setting a provisional agenda” issued on 23 January 2015

Source: Office of Public Counsel for Victims

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. Eric MacDonald

Counsel for the Defence

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
Mr. Enrique Carnero Rojo

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Mr Esteban Peralta-Losilla

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona Mckay

Other

I. Procedural Background

1. On 23 January 2015, the Chamber issued an order scheduling a status conference and setting a provisional agenda, instructing the parties and participants to file their observations on the issues mentioned in the provisional agenda and to inform the Chamber of any items they wish to be added to it by 2 February 2015.¹

2. On 28 January 2015, the Chamber issued the “Order reducing the time limit to file responses to ICC-02/11-02/11-201”, setting the deadline of 2 February 2015 for the Prosecution and the Legal Representative of Victims to respond to the Defence’s Request for extension of time in relation to the Joinder Request, and deciding that responses to the remainder of the Defence’s Request shall be made in the context of submissions prior to and during the status conference of the 13 February 2015.² On 30 January 2015, the Single Judge issued a Decision postponing, *inter alia*, the deadline for the submission of observations on the agenda until 9 February 2015.³

3. Accordingly, the Principal Counsel of the Office of Public Counsel for Victims, acting as Common Legal Representative of the victims admitted to participate in the case (the “Common Legal Representative”),⁴ respectfully submits the following observations.

¹ See the “Order scheduling a status conference and setting a provisional agenda” (Trial Chamber I), No. ICC-02/11-02/11-200, 23 January 2015.

² See the “Order reducing the time limit to file responses to ICC-02/11-02/11-201” (Trial Chamber I, Single Judge), No. ICC-02/11-02/11-202, 28 January 2015.

³ See the “Decision on the Prosecution request for extension of time and on the response deadline for ICC-02/11-02/11-204”, (Trial Chamber I, Single Judge), No. ICC-02/11-02/11-205, 30 January 2015.

⁴ See the “Decision on victims’ participation in the pre-trial proceedings and related issues” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-83, 1 June 2014, pp. 22-23; and the “Second Decision on victims’ participation in the pre-trial proceedings and related issues” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-111, 1 August 2014, pp. 13-15.

II. Submissions on items identified by the Chamber in the provisional agenda⁵

1) Regarding issues under item d)

i. Status of the victims admitted to participate at the pre-trial stage

4. The Common Legal Representative notes that the Pre-Trial Chamber admitted 470 victims to participate at the pre-trial stage of the proceedings in the present case.⁶ Out of these 470 victims, a/20163/12 passed away in 2013 and the Pre-Trial Chamber terminated her status of victim in relation to the *Blé Goudé* case on 1st August 2014.⁷ Victims a/20147/12 and a/10201/14 passed away in 2014.

5. The Common Legal Representative submits that all the victims admitted to participate at the pre-trial stage of the proceedings in the present case should automatically be admitted to participate at the trial stage without their victim status being determined *de novo*, with the exception of victims a/20147/12 and a/10201/14 for whom the status of victim should be terminated in the present proceedings.

6. This interpretation has been supported by different Trial Chambers of the Court. In particular, Trial Chambers II and III, in the *Katanga & Ngudjolo Chui* case⁸ and the *Bemba* case⁹ respectively, ruled that victims admitted to participate at the pre-trial stage of the proceedings shall be automatically admitted to participate at the trial stage, without their applications for participation having to be submitted and

⁵ See the “Order scheduling a status conference and setting a provisional agenda”, *supra* note 1, para. 7.

⁶ See the “Decision on victims’ participation in the pre-trial proceedings and related issues”, *supra* note 4, pp. 25-26; and the “Second Decision on victims’ participation in the pre-trial proceedings and related issues”, *supra* note 4, pp. 22-23.

⁷ See the “Second Decision on victims’ participation in the pre-trial proceedings and related issues”, *supra* note 4.

⁸ See the “Decision on the treatment of applications for participation” (Trial Chamber II), No. ICC-01/04-01/07-933-tENG, 26 February 2009, p. 23: “*The Chamber decides that the victims authorised by Pre-Trial Chamber I to participate in the proceedings are authorised to participate in the trial, without their applications having to be re-registered.*”

⁹ See the “Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties’ observations on applications for participation by 86 applicants” (Trial Chamber III), No. ICC-01/05-01/08-699, 22 February 2010, para. 22.

considered *de novo*. Indeed, according to regulation 86(8) of the Regulations of the Court, “[a] decision taken by a Chamber under rule 89 [of the Rules of Procedure and Evidence] [on the determination of victim status] shall apply throughout the proceedings in the same case, subject to the powers of the relevant Chamber in accordance with rule 91, sub-rule 1.”

7. In this regard, the Common Legal Representative submits that the charges as brought by the Prosecution have been entirely confirmed by the Pre-Trial Chamber.¹⁰

ii. Procedure to be adopted with respect to victim applicants who did not participate at the pre-trial stage

8. The Common Legal Representative submits that any person, organisation or institution meeting the criteria established under rule 85 of the Rules of Procedure and Evidence (the “Rules”) and who did not participate at the pre-trial stage of the proceedings in the present case, should be given the possibility to apply for participation at the trial stage within a time-limit and under modalities to be determined by the Chamber. Moreover, any said person, organisation and institution deemed to comply with the criteria under rule 85 of the Rules should be given the possibility to enjoy the right as enshrined under article 68(3) of the Rome Statute to participate in the trial proceedings in an effective and meaningful – as opposed to a purely symbolic – manner, including the possibility to contribute to the establishment of the truth and the rendering of Justice, as well as the possibility to tell their story and to have their story heard within the judicial framework.

9. The procedure adopted must give full effect to the victims’ right to be heard. In this regard, article 68(3) of the Rome Statute provides victims in a clear and non-ambiguous manner with the right to participate through their legal representative(s) in proceedings before the Court when their personal interests are affected. The

¹⁰ See the “Decision on the confirmation of charges against Charles Blé Goudé” (Pre-Trial Chamber I), No. ICC-02/11-02/11-186, 11 December 2014.

analysis of the preparatory works of said provision leaves no doubt about the fact that victims may participate at all stages of the proceedings before the Court, including trial proceedings.¹¹ In addition, “[t]he object and purpose of article 68(3) of the Statute and rules 91 and 92 of the Rules is to provide victims with a meaningful role in the criminal proceedings before the Court (including at the pre-trial stage of a case) so that they can have a substantial impact in the proceedings”.¹² Accordingly, the participation of victims in the proceedings before the Court shall be “effective and significant as opposed to purely symbolic.”¹³

10. While victims’ interests bear some similarities with the Prosecutor’s ones, victims undoubtedly have an independent role and voice in the Court’s proceedings, including *vis-à-vis* the Prosecutor,¹⁴ and, accordingly, their role cannot be either compared or confused with the one of the Prosecutor.¹⁵ Indeed, the very interest of the Prosecutor in the proceedings before the Court is to bring evidence with the aim to prove that the suspect/accused is criminally responsible under the Rome Statute

¹¹ See, for instance, the proposal submitted by France, UN Doc. PCNICC/1999/DP.2, 1st February 1999, p. 7; the proposal submitted by Costa Rica, UN Doc. PCNICC/1999/WGRPE/DP.3, 24 February 1999; and the proposal submitted by Colombia, UN Doc. PCNICC/1999/WGRPE/DP.37, 10 August 1999. See also BITTI (G.) and FRIMAN (H.), “Participation of Victims in the Proceedings”, in LEE (R.S.) (ed.), *The International Criminal Court: Element of Crimes and Rules of Procedure and Evidence*, Transnational Publishers Inc., New York, 2001, pp. 456-474.

¹² See the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/07-474, 13 May 2008, para. 157.

¹³ See the “Judgment on the Appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008” (Appeals Chamber), No. ICC-01/04-01/06-1432 OA9 OA10, 11 July 2008, para. 97; the “Decision on common legal representation of victims for the purpose of trial” (Trial Chamber III), No. ICC-01/05-01/08-1005, 1st December 2010 (dated 10 November 2010), para. 9(a); the “Decision on victims’ representation and participation” (Trial Chamber V), No. ICC-01/09-01/11-460, 3 October 2012, para. 10; and the “Decision on victims’ representation and participation” (Trial Chamber V), No. ICC-01/09-02/11-498, 3 October 2012, para. 9.

¹⁴ See the “DECISION ON THE APPLICATIONS FOR PARTICIPATION IN THE PROCEEDINGS OF VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 AND VPRS 6” (Pre-Trial Chamber I), No. ICC-01/04-101-tEN-Corr, 17 January 2006, para. 51; the “Decision on ‘Prosecutor’s Application to attend 12 February hearing’” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/05-155, 9 February 2007, p. 4; and the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, *supra* note 12, para. 155.

¹⁵ See the “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo’” (Appeals Chamber), No. ICC-01/04-01/06-824 OA7, 13 February 2007, para. 55.

for the crimes charged.¹⁶ In contrast, besides the interest to receive reparations,¹⁷ which is far from being the sole motivation of victims,¹⁸ the core interest of victims in the proceedings is to effectively exercise their rights to truth and Justice, rights recognised as essential for the persons directly affected by the crimes, by international human rights law,¹⁹ doctrine²⁰ and by the constant jurisprudence of the Court.²¹

11. The participation of victims in the proceedings before the Court in an effective and efficient manner is a necessary mechanism to implement their right to Justice and is an essential element of the full realisation of the other elements of that right,

¹⁶ See the “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, *supra* note 13, 11 July 2008, para. 93.

¹⁷ In this sense, see AMBOS (K.), *El Marco Jurídico de la Justicia de Transición*, Tenus, Bogota, 2008, notes 107-112. See also the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly of the United Nations in its resolution No. 60/147 in the 64th plenary meeting, UN Doc. A/RES/60/147, 16 December 2005, para. 21.

¹⁸ See the Note prepared by the former Special Rapporteur of the Sub-Commission, Mr. Theo van Boven, in accordance with paragraph 2 of Sub-Commission resolution 1996/28, UN Doc. E/CN.4/1997/104, 16 January 1997, pp. 2-5. See also the Final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, Question of the impunity of perpetrators of human rights violations (civil and political), UN Doc. E/CN.4/Sub.2/1997/20, 26 June 1997, pp. 3-31. See also the “Decision on victims’ participation” (Trial Chamber I), 18 January 2008, No. ICC-01/04-01/06-1119, para. 98.

¹⁹ See IACHR, *La Cantuta v. Peru*, Judgment of 29 November 2006, Series C, No. 162, para. 222; and *Velásquez-Rodríguez v. Honduras*, Judgment of 29 July 1988, Series C, No. 7, paras. 162-166 and 174. See also ECHR, *Hugh Jordan v. UK*, Application No. 24746/94, 4 May 2001, paras. 16, 23, 157 and 160; *Selmouni v. France*, Application No. 25803/94, 28 July 1999, para. 79; and *Kurt v. Turkey*, Application No. 24276/94, 25 May 1998, para. 140.

²⁰ See DONAT-CATTIN (D.), “Article 68”, in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court, Observers’ Notes, Article by Article*, Nomos, 2008, pp. 1279, 1290, 1291; NAQVI (Y.), “The Right to the Truth in International Law Fact or Fiction”, in (2006) *ICRC International Review*, No. 88, pp. 267-268; MENDEZ (J.), “The Right to Truth”, in JOYNER (Ch.) (ed.), *Reigning in Impunity for International Crimes and Serious Violations of Fundamental Human Rights’ Proceedings of the Siracusa Conference*, 17-21 September 1998, Eres, Toulouse, 1998, pp. 257; and AMBOS (K.), *El Marco Jurídico de la Justicia de Transición*, *op. cit. supra* note 17, pp. 42-44.

²¹ See, for instance, the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, *supra* note 12, paras. 31-44. See also the “Corrigendum - Directions for the conduct of the proceedings and testimony in accordance with rule 140” (Trial Chamber II), No. ICC-01/04-01/07-1665-Corr, 1st December 2009, paras. 82-91 (“[a]s a matter of general principle, [the participation of victims through their legal representative] must have as its main aim the ascertainment of the truth. [...] their participation may be an important factor in helping the Chamber to better understand the contentious issues of the case in light of their local knowledge and socio-cultural background”).

namely to know the truth and to obtain reparations.²² Such participation can only be deemed meaningful, rather than purely symbolic, if victims are entitled to positively contribute to the search for the truth. In this respect, any form of positive contribution from victims appears to be crucial for the accomplishment of the Court's function.²³

12. The Common Legal Representative submits that the possibility to tell their stories and to share their difficult and painful experiences with the judges constitutes one of the ways whereby the victims can positively contribute to the search for the truth. For the absolute majority of victims, except a very limited number of them enjoying the dual status of witness and victim, or appearing in person to present their views and concerns, the process of application for participation appears to be the only way to provide an account of their experience which might be of relevance for the search for the truth. Under the Rome Statute, victims have the right not only to tell their story but also to have their story heard within the judicial framework.²⁴

13. Given the abovementioned right of victims to tell their story and to have their story heard, as well as the obligation imposed upon the Court *vis-à-vis* victims, the Common Legal Representative submits that victims' statements contained in their applications for participation, in particular regarding the relevant events and the harm suffered, might be of relevance for the determination of the truth and should be duly considered and taken into account by the Chamber for the purpose of the trial proceedings.

²² See DONAT-CATTIN (D.), "Article 68", in TRIFFTERER (O.), *op. cit. supra* note 20, pp. 1279, 1290 and 1291.

²³ *Idem*, p. 1280.

²⁴ See the "DECISION ON THE APPLICATIONS FOR PARTICIPATION IN THE PROCEEDINGS OF VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 AND VPRS 6", *supra* note 14, para. 71: "[i]n the light of the core content of the right to be heard set out in article 68(3) of the Statute, [...] [said provision] imposes an obligation on the Court *vis-à-vis* victims. The use of the present tense in the French version of the text ('la Cour permet') makes it quite clear that the victims' guaranteed right of access to the Court entails a positive obligation for the Court to enable them to exercise that right concretely and effectively. It follows that the Chamber has a dual obligation: on the one hand, to allow victims to present their views and concerns, and, on the other, to examine them".

14. Regarding the model of victims' participation at the trial stage to be adopted in the present case, the Common Legal Representative, while being cognisant of the variety of models currently used within the Court, submits that the model to be adopted should be first and foremost in compliance with the right granted to victims under article 68(3) of the Rome Statute to participate in an effective and meaningful manner in the Court proceedings.²⁵

15. The Common Legal Representative further submits that, in accordance with the legal texts of the Court, the procedure for application should preserve the individual or individualised character of the victims' participation in compliance with the principle enshrined in article 68(3) of the Rome Statute. Therefore, the available six-page standard application form as revised and approved by the Presidency should be used in the present case.

16. Should the Chamber decide to simplify the application process, the Common Legal Representative submits that the model adopted at the pre-trial stage of the proceedings in the *Bosco Ntaganda* case is a suitable option,²⁶ as it will, on the one hand, be in compliance with the right of victims to participate in the proceedings under article 68(3) of the Rome Statute and, on the other hand, significantly assist the VPRS in processing victims' applications and the Chamber in its assessment of the requirements under rule 85 of the Rules.

17. In particular, said application form, although significantly reduced and simplified, still enables victims both to contribute to the search for the truth by providing specific details in relation to the events within the charges and to tell their story and have their story heard. At the same time, the simplified application form will provide the Chamber with sufficient information in order to determine the

²⁵ See the "Decision Establishing Principles on the Victims' Application Process" (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-67, 28 May 2013, paras. 19-25.

²⁶ See the "Decision Establishing Principles on the Victims' Application Process" (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-67, 28 May 2013, with a public Annex.

victim status, while simplifying the management of information provided by victims. The resulting advantage will be that the amount of time and resources needed for processing and assessing victims' applications is significantly reduced, thereby enabling the Court to deal effectively with a potentially large number of victims.

18. The Common Legal Representative observes that both models of victims' application process described *supra* combined with the model of legal representation of victims as adopted and implemented at the pre-trial stage of the present case are in practice sustainable and effective.

19. The Common Legal Representative does not favour the model of victims' participation as adopted in the *Kenyan* cases.²⁷ Indeed, should the *Kenyan* cases model be adopted, the absolute majority of victims in the present case would be deprived of the very meaning of their right enshrined in article 68(3) of the Rome Statute, *i.e.* the possibility both to positively contribute to the search for the truth and to tell their story and have their story heard.²⁸ This undue limitation to the rights of the victims would arise from the fact that should the *Kenyan* cases model be adopted (i) only few victims would be invited to fill in an application form in relation to the events and the harm they suffered from,²⁹ and (ii) no one – neither the parties nor the judges – would ever be in a position to hear the very personal and tragic stories of the other victims, because they would only be invited to register in a manner that is not linked to any judicial context. In other words, should the *Kenyan* cases model be adopted, for the absolute majority of victims in the present case, the participation in the proceedings before the Court would convert into a purely symbolic one.

²⁷ See the "Decision on victims' representation and participation" (Trial Chamber V), No. ICC-01/09-01/11-460 and No. ICC-01/09-02/11-498, 3 October 2012, *supra* note 13, paras. 48-55 and paras. 47-54, respectively.

²⁸ *Idem*, paras. 19-25 and paras. 18-24, respectively.

²⁹ See the "Decision on the Conduct of Trial Proceedings (General Directions)" (Trial Chamber V(A)), No. ICC-01/09-01/11-847-Corr, 9 August 2013, para. 21.

2) Regarding issues under item e)

20. The Common Legal Representative is not currently in a position to identify amongst the victims she represents the ones for whom she would either seek the Chamber's authorisation to call as witnesses or otherwise request to appear in person before the Chamber to present views and concerns.

21. Nevertheless, the Common Legal Representative is in a position to inform the Chamber of the languages spoken by the majority of the victims. Indeed, the languages mostly used by the victims are French, Djoula and Bambara. Therefore, should victims be identified by the Common Legal Representatives to be called to testify or otherwise appear in person before the Chamber, it is most likely that they will use one of said languages.

3) Regarding issues under item f)

22. The Common Legal Representative submits that it is a common interest of the entirety of the victims that the trial proceedings in the present case start as soon as possible and without any undue delay.

23. During various meetings held with the Common Legal Representative, victims expressed their wish for trial proceedings to be carried out in an expeditious manner, and made clear their strong opposition to any delay in the commencement of the trial.

24. The Common Legal Representative is aware of the Request filed by the Prosecution for the joinder of the *Laurent Gbagbo* and *Blé Goudé* cases.³⁰

25. In this regard, the Common Legal Representative recalls her previous submissions supporting the Prosecution's request for joinder and in particular the

³⁰ See the "Prosecution's Request to join the cases of *The Prosecutor v. Laurent GBAGBO* and *The Prosecutor v. Charles BLE GOUDÉ*", No. ICC-02/11-02/11-194, 22 December 2014.

fact that victims are of the view that *“said joinder is essential to their personal interest in the expeditiousness of the proceedings and share concerns that their appearance before the Court in successive proceedings may increase the existing risks to their security. The victims have also indicated that the joinder of the cases will allow a better understanding of the events which took place during the post-electoral crisis in Côte d’Ivoire, and in particular the extent of the victimisation and harms they suffered from”*.³¹

26. The Common Legal Representative further notes that the Prosecution’s Request has been filed at the early stage of preparation for trial in both cases, allowing for a proper and timely discussion of all preliminary matters so as to avoid undue delays in the proceedings. Therefore, the Common Legal Representative indicates that her estimation during the first status conference held in the *Laurent Gbagbo* case on 4 November 2014 that a joint trial could start in September 2015 remains realistic.³²

27. Should the cases not be joined, the Common Legal Representative is of the view that the trial should start as soon as practicable.

28. In this regard, the Common Legal Representative wishes to address the arguments put forward by the Defence in its submissions on the need to have adequate time and facilities to prepare for trial (the “Defence’s Request”).³³

29. The Common Legal Representative certainly does not contest the right of the Accused to a fair trial and to have adequate time and facilities to prepare for trial. However, the Common Legal Representative is of the opinion that the Defence’s

³¹ See the “Response of the Common Legal Representative of victims to the Prosecution’s request to join the *Gbagbo* and *Blé Goudé* cases (ICC-02/11-02/11-194)”, No. ICC-02/11-02/11-196, 6 January 2015, para. 13.

³² See the transcript of the hearing held on 4 November 2014, No. ICC-02/11-01/11-T-25-CONF-ENG ET, page. 69, line 4 (submissions made in open session).

³³ See the “Urgent Defence Submissions on the Need to Have Adequate Time and Facilities to Prepare for Trial and Extension of Time to Respond to Joinder Request”, No. ICC-02/11-02/11-201, 26 January 2015 (the “Defence’s Request”).

Request needs to be assessed in combination with the rights of the other party and the participants. The Common Legal Representative submits that the Defence's Request appears unreasonable as much as it is disproportionate and excessive.

30. Firstly, the Common Legal Representative notes that the Defence's Request is premature, intervening at a moment where the Chamber is scheduling the first status conference in preparation for trial and whereas the Chamber has not yet set even a provisional starting date for trial.

31. Moreover, the Common Legal Representative underlines that Mr. Knoops, while presenting himself as new counsel representing Mr. Blé Goudé,³⁴ has been working in the legal representation team for almost 5 months.³⁵ Therefore, the situation of Mr. Knoops cannot be compared to the situation of a newly appointed counsel in as much as Mr. Knoops is already familiar with the case and with the Accused, is also familiar with the legal texts of the Court, and has already gained first-hand experience in the proceedings of the Court through his participation, especially, in the confirmation of charges hearing. The Common Legal Representative further submits that the fact that Mr. Knoops was a member of the Defence team and participated in and attended the confirmation of charges hearing involves more than a vague familiarity with the procedural rules of the Court and the case, and implies that Mr. Knoops is already aware, in depth, of the central documents at this stage of the proceedings, which are the document containing the charges and the decision confirming the charges against the Accused, as well as of

³⁴ See the "Defence Submissions on 'Order scheduling a status conference and setting a provisional agenda'", No. ICC-02/11-02/11-204, 29 January 2015, para. 1: "(...) *the new defence team presently consists only of Lead Counsel and Co-Counsel, who are new appointees. As of the date of the present Order, Mr. Knoops had only been representing Mr. Blé Goudé for a mere two weeks and Mr. N'Dry for less*".

³⁵ See the email sent by the Registry on 3 February 2014 at 16h04 following instructions by the Chamber.

the evidence and arguments presented by all the participants at the stage of the proceedings which forms the basis and precedes the trial itself.³⁶

32. The Common Legal Representative submits that in light of the circumstances of the case, postponing the starting date of the trial for a year and a half when the Accused has been detained at the seat of the Court for almost a year already appears as an unrealistic proposition to say the least, since the Accused is available and awaiting his trial and the charges against him have been confirmed.

33. The Common Legal Representative respectfully notes that, despite the obvious need for a new team to get the necessary training and information about the case, these steps are to be taken in parallel with the preparation for trial and do not justify in any way the granting of time dedicated exclusively to it. Counsel and assistants to counsel who are on the list of practitioners before the ICC are deemed to be “ready”, to a certain extent, when accepting appointments. In this regard, the fact that Mr. Knoops was previously working as a *pro bono* associate counsel in the Defence team can only be seen as a serious advantage for the new Defence team he is now in the process of constituting.

34. The jurisprudence in the *Bosco Ntaganda* case to which the Defence refers in its Request³⁷ illustrates the Common Legal Representative’s submission: the Trial Chamber set a trial date in light of various factors, amongst which were indeed the replacement of the Accused’s lead counsel, but also the volume of the case and the state of disclosure (information which is yet to be presented by the Prosecution in

³⁶ The fact that Mr. Knoops gained first-hand knowledge by his previous participation in the defence team is also demonstrated by the Defence’s Request which refers to the time it would need to prepare motions to protect the rights of the Accused in light of procedural actions not taken by the previous defence team. See the Defence’s Request, *supra* note 33, para. 23.

³⁷ See the “Corrigendum of ‘Order scheduling a Status Conference and Setting the Commencement Date for the Trial’” (Trial Chamber VI), No. ICC-01/04-02/06-382-Corr, 28 November 2014, para. 8, referred to in footnote 34 of the Defence’s Request, *supra* note 33.

due time),³⁸ giving therefore in the context of that particular case a little more than 6 months for trial preparation (and not 10 months as argued by the Defence).³⁹ The Common Legal Representative submits that, in comparison, as it is the comparison chosen by the Defence itself, the 18 months requested in the present instance appears highly disproportionate, all the more so at this stage of the proceedings. Equally, the reference made by the Defence to the adjournment of the provisional date set in the *Kenyatta* case is highly inappropriate as the context in which the Prosecution requested said adjournment is not comparable to the present instance.⁴⁰

35. Finally, regarding the part of the Defence's Request relating to the translation into French of all relevant documents for the Accused, the Common Legal Representative refers to the existing jurisprudence of the Court on such issue. As stated by the Pre-Trial Chamber in both the *Lubanga* and the *Katanga* cases, "[t]he right set out in article 67(1)(a) of the Statute grants [the accused] the right to be informed in detail of the nature, cause and content of the charges against him as opposed to granting him a general right to receive all documents from the Prosecution in a language he fully understands and speaks; that the Chamber is of the view that the detailed description of the charges together with a list of evidence ("the Charging Document and List of Evidence") provided for in rule 121(3) of the Rules will adequately inform [the accused] of the nature, cause and content of the charges against him; and that the rights of [the accused] under article 67(1)(a) of the Statute would be duly guaranteed by the filing by the Prosecution in the record of the case against the suspect of a French version of the Charging Document and List of Evidence and, as the case may be, of the Amended Charging Document and List of

³⁸ See the "Order scheduling a status conference and setting a provisional agenda", *supra* note 1, p. 4, which includes presentations and discussions yet to happen on the timing, volume and modalities of disclosure of evidence pursuant to rule 76 of the Rules; information concerning the protection of witnesses; information on material already disclosed and intended to be disclosed by the Prosecution pursuant to article 67(2) of the Statute and rule 77 of the Rules; updates on victims' applications; information on languages to be used in the proceedings; etc.

³⁹ See the Defence's Request, *supra* note 33, paras. 27-28.

⁴⁰ *Idem*, paras. 30-31. The adjournments of the starting date of the trial in the *Kenyatta* case were related to issues encountered by the Prosecution with evidence and witnesses and as such, cannot serve as a useful comparison in this case.

Evidence within the time limits provided for in rule 121(3), (4) and (5) of the Rules. Using the words “as are necessary to meet the requirements of fairness”, article 67(1)(f) of the Statute does not grant [the accused] the right to have all procedural documents and all evidentiary materials disclosed by the Prosecution translated into a language that [the accused] fully understands and speaks; and that this interpretation is fully consistent with the case law of the ECHR on this matter”.⁴¹

36. The Common Legal Representative further notes that the extent of the Defence’s Request with regard to the documents it considered as being relevant in this context is not clear. Moreover, the Common Legal Representative submits that not “*all the filings and decisions that are relevant to the Blé Goudé case*”⁴² will be considered “relevant” to meet the requirements of fairness as described by the legal texts of the Court. In this regard, the Common Legal Representative wishes to refer to the criteria developed by the Trial Chamber in the *Lubanga* case, which interpreted the threshold of the Rome Statute as what has to be considered “fair” on the accused, and what would not “constitute a breach of article 67(1)(f) of the Statute”.⁴³ By analogy with said jurisprudence, “[i]t follows that the essential requirement is for the Chamber to ensure that the accused is provided with a translation of the [necessary documents] in circumstances that protect the fairness of the proceedings. [...] It is generally accepted that the Chamber would need to move to the next phase whatever the result, avoiding the delay that would be caused by waiting for the complete French translation. [...] Nevertheless, certain minimum safeguards need to be in place to ensure that the accused and his counsel are able adequately to prepare for this next phase [which in the present case, is the start of the trial]”.⁴⁴

⁴¹ See the “Decision on the Requests of the Defence of 3 and 4 July 2006” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/06-268, 4 August 2006, pp. 5-6; and the “Decision on the Defence Request Concerning Languages” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/07-127, 21 December 2007, paras. 40-41 [we underline].

⁴² See the Defence’s Request, *supra* note 33, para. 46.

⁴³ See the “Decision on the translation of the Article 74 Decision and related procedural issues” (Trial Chamber I), No. ICC-01/04-01/06-2834, 15 December 2011, paras. 18-25.

⁴⁴ *Idem*, paras. 19-21.

37. Moreover, and absent further information provided by the Defence in this regard (more than the fact that the French language was the official language of instruction throughout the Accused's education in Côte d'Ivoire), the Common Legal Representative fails to understand the paradoxical propositions of the Defence that "[a]lthough Mr Charles Blé Goudé stated on record that he speaks and understands the English language [...] the English language [...] is "a language which is not fully understood and spoken by the defendant"". ⁴⁵ Absent more explanations, the Common Legal Representative fails to see how the fact the Mr. Blé Goudé studied in French in Côte d'Ivoire excludes or prevents him from also speaking and understanding English as he himself stated before the Chamber. However, should this information be verified by the Chamber, the Common Legal Representative of course would not oppose that the Accused, in accordance with his fundamental rights as protected by the Rome Statute, be granted access to translations in French of the documents the Chamber will then deem necessary.

38. Finally, the Common Legal Representative reserves her right to submit to the Chamber specific views and concerns expressed by the victims regarding the commencement of the trial once the parties have presented submissions in this regard.

III. Submissions on other issues arising from the provisional agenda

39. The Common Legal Representative respectfully submits that in addition to the issues for which she has been invited to present submissions, issues under item b) of the provisional agenda are also directly relevant to the victims' interests.

40. The Common Legal Representative notes that a number of victims bearing a dual status of witness and victim are already covered by protective measures

⁴⁵ See the Defence's Request, *supra* note 33, paras. 45-46.

currently implemented. She submits that should the Prosecution intend to seek variation of any of the protective measures already implemented, or to request for protective measures to be applied in relation to other victims, the Common Legal Representative must be properly informed in advance. This is necessary in order to preserve the security, safety and well-being of the victims concerned and to prevent any potential risk in this regard, in conformity with article 68(1) of the Rome Statute. It is also necessary to enable the Common Legal Representative to properly discharge her professional obligations under the Code of Professional Conduct for counsel, and in particular the duty to *“take into account [her] client’s personal circumstances and specific needs”*.⁴⁶

41. Moreover, the Common Legal Representative submits that for the purpose of ensuring an adequate protection of the security, safety and well-being of victims, a comprehensive mechanism regulating the exchange of information and contact with individuals enjoying dual status should be established in due course on the basis of the current jurisprudence of the Court.⁴⁷

IV. Submissions on possible items to be added to the agenda⁴⁸

1) Adoption of Protocols

42. Discussions amongst the parties, the participants and the Registry on the adoption of the protocols on (i) the disclosure of the identity of witnesses of the opposing party or the participant, (ii) the handling of confidential information in the course of investigations and the contact between a party or participant and witnesses of the opposing party or participant, (iii) the preparation and familiarization of witnesses, (iv) the exchange of information on individuals enjoying dual status, and

⁴⁶ See the Code of Professional Conduct for counsel, No. ICC-ASP/4/Res.1, article 9(2).

⁴⁷ See, for instance, the “Decision on certain practicalities regarding individuals who have the dual status of witness and victim” (Trial Chamber I), No. ICC-01/04-01/06-1379, 5 June 2008. See also para. 42 *infra*.

⁴⁸ See the “Order scheduling a status conference and setting a provisional agenda”, *supra* note 1, para. 8.

(v) the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses are currently ongoing in the *Laurent Gbagbo* case, with the aim, *inter alia*, to standardise practices regarding these matters.

43. The Common Legal Representative is of the opinion that similar discussions should take place in the present case. In order to expedite the process, the Common Legal Representative suggests that the Defence of Mr. Blé Goudé be informed of the current discussions and provided with the relevant documents in order to be able to participate in said discussions.

2) Transmission to the Defence of less redacted versions of victims' applications

44. The Common Legal Representative wishes to inform the Chamber that she has no objection to the transmission to the Defence of the less redacted versions of the application forms of the participating victims contained in Annexes 1 to 198 of the submission filed in the *Laurent Gbagbo* case,⁴⁹ once the Registry has provided its observations on the matter as instructed.⁵⁰

45. In relation to the remaining victims' application forms, the Common Legal Representative reiterates her position as expressed in the *Laurent Gbagbo* case regarding the categories of redactions which may be lifted if they do not compromise the security and well-being of the persons concerned.⁵¹ She further informs the Chamber that she will be able to review said applications and inform the Chamber accordingly by mid-March 2015. In this regard, cognisant of the instructions issued

⁴⁹ See the "Soumissions conjointes de la Représentante légale des victimes et de la Défense de M. Laurent Gbagbo portant sur certaines questions relatives à la participation des victimes au procès", No. ICC-02/11-01/11-748, 19 January 2015.

⁵⁰ See the "Order requesting observations from the Registry and reducing the time limit to file a response in relation to ICC-02/11-01/11-748" (Trial Chamber I, Single Judge) No. ICC-02/11-01/11-751-Conf, 23 February 2015.

⁵¹ See the "Soumissions conjointes de la Représentante légale des victimes et de la Défense de M. Laurent Gbagbo portant sur certaines questions relatives à la participation des victimes au procès", *supra* note 49, para. 7.

by the Single Judge to the Registry in the *Laurent Gbagbo* case,⁵² the Common Legal Representative suggests undertaking such review in coordination with the Registry.

46. Concerning individuals enjoying the dual status of participating victims and witnesses, the Common Legal Representative also reiterates her previous submissions filed in the *Laurent Gbagbo* case according to which she has no objections to the lifting of redactions contained in the application forms in accordance with the information which is not redacted in the statements provided to the Prosecution by the concerned persons.⁵³ In this regard, the Common Legal Representative will consult with the Prosecution and will inform the Chamber accordingly.

47. Last but not least, the Common Legal Representative informs the Chamber of her availability to continue to represent the interests of the participating victims at the trial stage.

Respectfully submitted.



Paolina Massidda
Principal Counsel

Dated this 9th day of February 2015

At The Hague, The Netherlands

⁵² See the "Order requesting observations from the Registry and reducing the time limit to file a response in relation to ICC-02/11-01/11-748", *supra* note 50.

⁵³ See the "Soumissions conjointes de la Représentante légale des victimes et de la Défense de M. Laurent Gbagbo portant sur certaines questions relatives à la participation des victimes au procès", *supra* note 49, paras. 11-12.