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International
Criminal
Court

Original: **English**

No.: **ICC-02/11-01/15**
Date: **03 September 2015**

TRIAL CHAMBER I

Before: **Judge Geoffrey Henderson, Presiding Judge**
Judge Olga Herrera Carbuccia
Judge Bertram Schmitt

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

Directions on the conduct of the proceedings

Decision 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
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Counsel for Laurent Gbagbo
Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé
Mr Geert-Jan Alexander Knoops
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Legal Representatives of Victims
Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

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

Detention Section

Victims Participation and Reparations Section

Others

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Trial Chamber I ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé,* having regard to Articles 64 and 67-69 of the Rome Statute ('Statute'), Rules 68, 87-88, 91, 134 and 140 of the Rules of Procedure and Evidence ('Rules'), and Regulations 43 and 56 of the Regulations of the Court ('Regulations), issues the following 'Directions on the conduct of the proceedings'.

I- BACKGROUND

1. On 11 March 2015, the Chamber issued a decision,[1] which, *inter alia,* instructed the parties and the Legal Representative of Victims ('LRV') to file, by 14 April 2015, written submissions[2] on the conduct of the proceedings in preparation for the first status conference in the *Gbagbo and Blé Goudé* case.

2. On 21 April 2015, during the status conference, the Chamber heard the parties' and the LRV's submissions on the conduct of proceedings and requested that they submit any additional observations on the conduct of proceedings and modalities of the victims' participation by 21 May 2015.[3]

3. As instructed by the Chamber in its 'Decision on victim participation',[4] on 30 April 2015, the Registry submitted its report on the legal representation of

[1] Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters, ICC-02/11-01/15-1. On the same day, the decision was filed in the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* as ICC-02/11-01/11-810 and ICC-02/11-02/11-222, respectively.
[2] *Soumissions de la Défense concernant l'ordre du jour de la conférence de mise en état prévue le 21 avril 2015*, 14 April 2015, ICC-02/11-01/15-32-Conf; Defence Submissions on Agenda Items for the Status Conference of 21 April 2015, 14 April 2015, ICC-02/11-01/15-33; Prosecution's submission on the provisional agenda for the 21 April status conference; 14 April 2015, ICC-02/11-01/15-35-Conf; Submissions on the Provisional Agenda for the Status Conference to be held on 21 April 2015, 14 April 2015, ICC-02/11-01/15-36. Public redacted versions of the Prosecution's and Gbagbo Defence's submissions were filed on 14 April 2015 as ICC-02/11-01/15-35-Red and ICC-02/11-01/15-32-Red, respectively.
[3] Status Conference of 21 April 2015, ICC-02/11-01/15-T-1-CONF-ENG, page 56, lines 23-25.
[4] Decision on victim participation, 6 March 2015, ICC-02/11-01/11-800, para. 63.

victims ('Registry Report').[5] The LRV filed its observations thereon on 1 May 2015 ('LRV Observations').[6]

4. On 8 May 2015, the Prosecution filed its proposed protocol on the conduct of proceedings along with submissions on four related issues not addressed in its proposed protocol, namely, (i) the procedure for a 'no case to answer' motion, (ii) unsworn statements by the accused, (iii) alibi or grounds excluding criminal responsibility, and (iv) defence disclosure.[7]

5. On 19 May 2015, the defence team for Mr Charles Blé Goudé[8] filed further submissions on the conduct of proceedings.

6. On 21 May 2015, the LRV[9] and the defence team for Mr Laurent Gbagbo[10] also filed further submissions on the conduct of proceedings.

7. On 8 and 21 May 2015, the Prosecution, the defence team for Mr Charles Blé Goudé and the defence team for Mr Laurent Gbagbo (together, 'Defence' or 'Defence teams') and the LRV filed observations related to the victims' participation during the trial.[11]

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[5] Registry's Report on the Legal Representation of Victims for the Purpose of the Trial pursuant to Decision ICC-02/11-01/11-800, 30 April 2015, ICC-02/11-01/15-49-Conf-Exp ('Registry Report'). Upon direction of the Chamber (see email from Legal Officer of the Chamber to the Registry, 8 May 2015, at 16.47), a public redacted version of the Report was filed on 15 May 2015 (ICC-02/11-01/15-49-Red).
[6] Information on Common Legal Representation of Victims in the proceedings, 1 May 2015, ICC-02/11-01/15-53-Conf-Exp ('LRV Submissions'). A public redacted version of the report was filed on 15 May 2015, ICC-02/11-01/15-53-Red.
[7] Prosecution's Observations on the Conduct of Proceedings, ICC-02/11-01/15-59, with public Annex A.
[8] Defence observations on the conduct of proceedings, ICC-02/11-01/15-77.
[9] Further Submissions on the Conduct of the Proceedings, ICC-02/11-01/15-73.
[10] *Soumissions de la Défense quant à la conduite de la procédure*, ICC-02/11-01/15-74.
[11] Prosecution Observations on the Modalities of Victim Participation at Trial, 8 May 2015, ICC-02/11-01/15-60; Further Submissions on the Modalities of Victims' Participation at Trial, 21 May 2015, ICC-02/11-01/15-75; Defence Submission on Victims' Participation, 21 May 2015, ICC-02/11-01/15-76; *Soumissions de la Défense sur les modalités de la participation des victimes à la procédure*, 21 May 2015, ICC-02/11-01/15-78.

II- DIRECTIONS

8. The following constitutes the Chamber's directions, pursuant to Rule 140 of the Rules, on the conduct of proceedings and the modalities of victim participation.

A. Opening Statements

9. The Chamber will hear opening statements in the following order:

(i) Prosecution,

(ii) LRV,

(iii) Gbagbo Defence, and

(iv) Blé Goudé Defence.

10. The parties are allotted 3 hours each for opening statements; the LRV 2 hours. The parties and the LRV need not use all of their allotted time. The Defence teams may reserve all or part of their time to make their opening statements after the close of Prosecution's presentation of evidence and prior to the presentation of evidence, if any, by the Defence.

11. The parties and the LRV are directed to notify any material they intend to use in the course of their opening statements to the Chamber, parties and the LRV, eight days prior to the commencement of trial. Any objections to the use of such material shall be filed five days prior to the commencement of trial. The parties and the LRV will be permitted to use audio/visual material during opening statements.

B. Phases of the trial relating to the presentation of evidence

12. The Chamber recalls that, in accordance with Articles 64(6)(b) and 69(3) of the Statute, it may intervene at any time during the presentation of evidence and may order the production of any evidence it considers necessary for the

determination of the truth. Subject to this *proviso*, the trial will be organised into the following phases:

(i) Presentation of evidence by the Prosecution;

(ii) Presentation of evidence by the LRV, if leave is granted;

(iii) Presentation of evidence by the Gbagbo Defence, if applicable,

(iv) Presentation of evidence by the Blé Goudé Defence, if applicable;

(v) Prosecution evidence in rebuttal, if leave is granted;

(vi) Evidence of the Gbagbo Defence in rejoinder, if applicable; and

(vii) Evidence of the Blé Goudé Defence in rejoinder, if applicable.

C. *Notification by the Defence of grounds for excluding criminal responsibility and disclosure by the Defence*

13. The Chamber recalls Rule 79 of the Rules which requires the Defence to notify the Prosecution of its intent to raise the existence of an alibi or grounds for excluding criminal responsibility sufficiently in advance to enable the Prosecution to adequately prepare and respond. The Chamber invites the Defence to provide this notification, if any, prior to the start of trial. However, the Chamber notes that Rule 79 of the Rules specifically provides that failure by the Defence to provide such notice shall not limit its right to raise such matters and to present evidence thereon.

14. The Chamber considers that disclosure by the Defence shall be notified to the Chamber, parties and the LRV 14 days prior to the commencement of the presentation of evidence by the Defence. Further directions on the scope of Defence disclosure will be provided in due course.

D. Length and timing of the presentation of evidence by the Prosecution

15. On 30 June 2015, in accordance with the Chamber's 'Order setting the commencement date for trial'[12] which, *inter alia*, scheduled the trial to start on 10 November 2015, the Prosecution filed its list of witnesses and evidence, indicating its intention to rely on 138 witnesses at trial, 4,790 items of evidence, and estimating the total time (522 hours) that it will need for the presentation of its case.[13] The Prosecution also indicated that it expects to reduce the estimated number of witnesses, the number of items of evidence, and/or the total time needed following discussions with the Defence and prior to the commencement of trial.[14] The Chamber has taken note of these submissions and, in particular, the Prosecution's undertaking that it will reduce the number of witnesses and/or evidence where possible.

16. Accordingly, although the Chamber will not take any decision at this time aimed at reducing either the number of witnesses or the estimated total time for the Prosecution case, it emphasises the accused's right to be tried without undue delay and the Chamber's trial management powers to ensure that the proceedings are fair and expeditious. The Chamber directs the Prosecution to inform it, the parties and the LRV at the earliest possible opportunity of any decisions to withdraw a witness from the list of witnesses or any circumstances that may impact on the length and timing of the presentation of evidence.

17. In light of the above, and as the trial progresses, the Chamber may provide further directions to the parties aimed at improving the efficiency of the presentation of their evidence. Further, the parties must always be prepared to

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[12] 7 May 2015, ICC-02/11-01/15-58.
[13] Prosecution's submission of its List of Witnesses and List of Evidence ('Prosecution's List of Evidence'), ICC-02/11-01/15-114, paras 3, 6 and 7, with confidential annexes A, B and C. Corrigenda to Annexes A and B were filed on 24 July 2015: ICC-02/11-01/15-114-Conf-AnxA-Corr and ICC-02/11-01/15-114-Conf-AnxB-Corr.
[14] Prosecution's List of Evidence, ICC-02/11-01/15-114, paras 6-7.

continue with the case, even if less time than estimated is required for a particular witness.

E. Scheduling of Prosecution witnesses

18. On 30 June 2015, the Prosecution provided a list of the witnesses it expects to call during the presentation of its evidence.[15] Pursuant to an order of the Chamber, the Prosecution will provide, by 15 October 2015, a list indicating, in order, the first 20 witnesses it intends to call.[16] Thereafter, the Prosecution shall provide by the 20th day of each month, a list for all of the witnesses it intends to call the following month, in the anticipated order of their appearance.

19. On a weekly basis, on each Thursday, the Prosecution shall provide *via* email to the Chamber, parties and LRV updated information concerning the presentation of witnesses for the following week including:

    (i) The witnesses it intends to call, and the order it intends to call them;

    (ii) The final estimate of the length of time for questioning of each witness on the list; and

    (iii) Details of any in-court protective measures that will or have been sought, in accordance with the directions provided in section 'I' below.

20. If there are any subsequent changes to the schedule or the calling order, the Prosecution shall inform the Chamber, the parties and the LRV as early as possible.

[15] Annex A to the Prosecution's List of Evidence, ICC-02/11-01/15-114-AnxA-Corr-Anx. The number of witnesses has since been reduced. *See* Prosecution Notice of Withdrawal of Witness P-0439 from the List of Witnesses, 24 July 2015, ICC-02/11-01/15-160.
[16] Order setting the commencement date for trial, 7 May 2015, ICC-02/11-01/15-58, para. 25.

F. Scheduling of Defence witnesses, if any

21. During the phase of the case during which the Defence may present its evidence, should either Accused wish to call witnesses, the Chamber directs the Defence to, on a weekly basis, on each Thursday, provide the Chamber, parties and the LRV a calendar with the expected order of the witnesses to be called the following week, an estimate of the length of time for the testimony of each witness and details of any in-court protective measures that will or have been sought, in accordance with the directions provided in section 'I' below.

22. If there are any subsequent changes to the schedule or the calling order, the calling party shall inform the Chamber, the parties and the LRV as early as possible.

G. General issues concerning testimony

23. In accordance with Rule 66 of the Rules, the testimony of each witness will be preceded by a solemn undertaking, which will remain in effect for the duration of the witness's testimony at trial.

i. *Testimony and/or unsworn statement by the accused*

24. In accordance with Article 67(1)(g) of the Statute, the accused has the right to remain silent, without such silence being a consideration in the determination of guilt or innocence.

25. The accused also has the right to make an unsworn oral statement in his defence under Article 67(1)(h) of the Statute. Should either accused decide to exercise this right, the respective Defence team shall file a notice with the Chamber, prior to the start of its presentation of evidence, if any. Thereafter, the Chamber will rule on the appropriate moment and modalities for the accused to exercise this right. As such a statement would not constitute

evidence, the Prosecution may address it in its closing brief, or in the course of its closing statement, but will not be permitted to produce (new) evidence in rebuttal.

26. The accused also has the right to obtain the attendance and examination of witnesses on his behalf and not to be compelled to testify, pursuant to Article 67(1)(e) and (g) of the Statute. If an accused elects to give evidence on his own behalf, he will be subject to the same rules applicable to other witnesses, including the requirements to give a solemn undertaking and to be questioned by the other parties and the LRV, in accordance with the directions *infra*.

ii. Order of questioning

27. The directions specified below concerning the order of questioning shall be read subject to Rule 140(2)(c) of the Rules, pursuant to which the Chamber may question a witness at any time.

1. Prosecution as the calling party

28. When the Prosecution is the calling party, it will question the witness first. Thereafter, the LRV may question the witness, with leave. Next, the Gbagbo Defence and Blé Goudé Defence will have the opportunity to question the witnesses. The Defence teams may agree amongst themselves to change the order in which they question witnesses.

2. Defence as the calling party

29. The Defence team calling the witness will examine the witness first. Thereafter, the Defence team not calling the witness will have an opportunity to put any additional questions to the witness. Next, the Prosecution may question the witnesses, and may be followed by the LRV, if leave is granted.

3. *Victims or witnesses testifying or victims making unsworn statements at the request of LRV*

30. Should the LRV wish to present evidence on issues concerning the victims' interests or propose victim(s) who wish to make unsworn statements to present their 'views and concerns', the LRV may file an application to this effect one month before the expected end of the Prosecution's presentation of evidence. Thereafter, the Chamber will decide accordingly, taking into consideration whether the request is appropriate, and bearing in mind the interests of victims and the rights of the accused persons pursuant to Article 68(3) of the Statute.

31. The application by the LRV shall include the name and identifying information of the witness or victim, and to the extent possible:

(i) A witness statement and/or a detailed summary of the expected testimony;

(ii) An estimate of the length of time considered necessary for questioning;

(iii) A list of any material the LRV wishes to use during questioning;

(iv) Details of any in-court protective measures that would be sought, should leave be granted; and,

(v) An averment as to why the testimony of the proposed witness (a) is relevant to the victims' personal interests, (b) is relevant to the issues of the case, (c) would contribute to the determination of the truth, and (d) would not be inconsistent with the rights of the accused and a fair and impartial trial.

32. If the Chamber decides to call the witness(es) proposed by the LRV, the LRV will be the first to put questions to the witness. Thereafter, the Prosecution

will have an opportunity to question the witness, followed by the Gbagbo Defence and the Blé Goudé Defence.

iii. *Mode and scope of questioning*

33. All questioning shall be conducted in a focused and professional manner and shall contribute to the ascertainment of the truth. This means that the Chamber expects that the parties and the LRV will endeavour to ask questions in accordance with a logical narrative and/or in chronological order. The Chamber underlines that questioning is not to be used to obfuscate or delay the fact-finding process. In principle, the same witness should not need to be called to testify more than once. Thus, to the extent possible, and subject to the rights of the accused under Article 67(1) of the Statute, the parties and the LRV shall endeavour to avoid the re-calling of witnesses.

1. Questioning by the calling party

34. When the calling party is examining a witness, it shall do so with neutral questions. In exceptional circumstances, the calling party may be permitted to pose leading questions to a witness if the Chamber determines that it will contribute to the efficiency of the trial or the determination of truth.

35. In particular, the Chamber directs the parties to engage in *inter partes* consultation and, to the extent possible, agree on the non-contentious areas of questioning by the calling party for which the testimony may be expedited by use of leading questions. Should the parties reach such an agreement, this can be indicated to the Chamber in advance by way of email.

2. Questioning by the non-calling party

36. In accordance with Rule 140(2)(b) of the Rules, the non-calling party may question a witness concerning any relevant matters. Unless otherwise directed by the Chamber, leading questions by a non-calling party will be permissible.

As a general rule, the non-calling party is expected to take no more than twice the amount of time for its questioning as the calling party took in its questioning of the witness.

3. Questioning by the LRV, if leave is granted

37. If leave is granted, the LRV will be permitted to question witnesses. Such questioning shall be conducted in a neutral manner, and to the extent relevant to the victims' interests. Requests by the LRV to question a witness shall be made in writing and emailed to the Chamber and the parties seven days before the witness is scheduled to appear. The application shall indicate (i) the specific topics on which the LRV proposes to ask questions, (ii) how this line of questioning is relevant to the victims' interests, and (iii) list the material the LRV wishes to use during the questioning of the witness. Any objections to the application shall be emailed to the parties, LRV and the Chamber within 3 days of receipt. In general, the Chamber will rule on the application(s) orally in Court.

4. Re-examination by the calling party, if leave is granted

38. In exceptional circumstances, the calling party may be permitted to re-examine its witness, but shall be limited to issues raised for the first time during questioning by the non-calling parties or the LRV. If the Chamber permits the Prosecution to re-examine its witness, the Defence teams will be permitted to ask any final questions of the witnesses in accordance with Rule 140(2)(d) of the Rules.

5. Objections concerning the mode, manner and scope of questioning

39. Objections by a party or participant during trial concerning the mode, manner or scope of questioning by another party or participant must be raised with

the Chamber at the time the question is asked, and will be decided on a case-by-case basis. After having heard briefly from the parties and the LRV, the Presiding Judge, in consultation with the Chamber, will either rule immediately or, in exceptional cases, will take the matter under consideration and rule at the earliest opportunity.

iv. ***Hostile witnesses***

40. In exceptional circumstances, the calling party may be permitted to pose leading questions to a witness if the Chamber determines that that the witness has become adverse and not appearing desirous of providing the expected evidence. In such circumstances, the calling party may – having provided the witness with an opportunity to explain deviations from expected testimony – make an application to declare the witness 'hostile'.

41. In determining whether a witness is hostile to the calling party, the Chamber may consider, *inter alia,* whether (i) the witness has been uncooperative in his or her general demeanour; (ii) the testimony of the witness before the Court has been in whole or in part deliberately or systematically inconsistent with a prior statement; or (iii) the witness has become systematically oppositional to the calling party, not only by appearing to deliberately impugn the party's case, but in addition by appearing to systematically support the case of the opposing party.

v. ***Use of material during the examination of a witness***

42. On Thursday of each week, the calling party shall provide the Chamber, other parties and the LRV with a list, *via* email, of any material to be used during its examination of the witnesses who will be testifying the following week. The calling party shall also indicate any portions or passages intended to be used within this material and whether the party intends to tender the material as evidence.

43. Any objections thereto shall be notified within two days of the expected start of the witness's testimony. If the material the calling party wishes to use during questioning was not included in its List of Evidence, the party shall apply for leave from the Chamber to add this material to its list. The Chamber will decide on the application after having heard from the other parties and the LRV.

44. Within 24 hours before the non-calling party questions the witness, the non-calling party shall provide a list of any material it intends to use during its questioning, *via* email, and if the material is not already available in E-Court, shall provide copies of it to the parties, the LRV and the Chamber. To the extent possible, the party intending to use the material shall ensure that electronic copies have been uploaded into E-Court prior to their use during trial.

45. Should the LRV wish to use material during the questioning of a witness, the LRV shall follow the application procedure provided in section (G)(ii)(3), above.

46. In principle, parties shall only use material during the questioning of a witness that has been properly disclosed. The LRV is also directed to provide to the parties any material it wishes to use in sufficient time to ensure that the fairness and expeditiousness of the proceedings is respected.

vi. ***Using statements to refresh a witness's memory***

47. In principle, a witness shall testify orally to what he or she remembers having personally observed. Witnesses are not permitted to simply read from earlier statements or other documents. However, when the calling party is questioning a witness, the Chamber may allow witnesses to refer to other material in order to refresh their memories, but only insofar as:

(i) The material contains the personal recollections of the witness; and,

(ii) Copies of the material has been properly disclosed to the opposing party, who may rely on the parts referred to by the witness during cross-examination.

vii. ***Use of audio/visual material during the examination of a witness***

48. Audio-visual material will not be considered for the truth unless it is admitted into evidence. If a party wishes the material to be admitted into evidence, as soon as practicable, and if the material is not already available in E-Court, the party shall provide copies of the material to the parties, the LRV and the Chamber indicating which parts of the recording will be used along with any corresponding translation. If a party wishes to present audio-visual material to a witness, it must establish that the witness has personal knowledge of the making of the recording or its contents. This may be achieved by playing a brief excerpt of the audio-visual material only to the extent strictly necessary for the witness to confirm his/her personal knowledge of it.

viii. ***Self-incrimination of witnesses***

49. The Registry shall make all necessary arrangements to provide independent legal advice to witnesses who may be at risk of incriminating themselves during their testimony.

50. The advising lawyer shall then seize the Chamber of any application for assurances under Rule 74(3)(c) of the Rules, if required. The parties shall be notified of such an application. The advising lawyer shall also be responsible for informing the witness of the offence defined in Article 70(l)(a) of the Statute, in accordance with Rule 66(3) of the Rules.

H. *Evidence*

51. Pursuant to Article 69 of the Statute and Rule 63(2) of the Rules, the Chamber shall have the authority to assess freely all evidence submitted in order to determine its relevance or admissibility. In accordance with Rule 64(3) of the Rules, the Chamber will not admit evidence that it considers is *prima facie* without relevance or probative value. In line with Article 69(4) of the Statute, in ruling on the admissibility of evidence, the Chamber will also take into account any prejudice that such evidence may cause to a fair trial or the fair evaluation of the testimony. Likewise, the Chamber will not admit evidence where a determination has been made under Article 69(7) of the Statute. It is for the submitting party to demonstrate the admissibility of the evidence and proffer reasons why it is relevant to and probative of the facts in issue.

i. *Expert witnesses*

52. As ordered by the Chamber, on 30 June 2015, the Prosecution disclosed the names of the proposed expert witnesses it intends to call during the presentation of its evidence.[17] The Chamber directs the parties to engage in *inter partes* consultations to the extent possible, jointly agree on experts. If no agreements can be reached, by 1 December 2015, each Defence team may file a notice indicating whether it (i) challenges the qualifications of the witness as an expert, and/or (ii) challenges the relevance of all, or parts of the report written by the expert, if any.

53. The procedure set out in section 'G(ii) and (iii)' of this decision concerning the questioning of witnesses appearing in court shall apply *mutatis mutandis* to the testimony of expert witnesses, unless otherwise ordered.

[17] Prosecution's List of Evidence, ICC-02/11-01/15-114-Conf-AnxA-Corr.

ii. *Prior recorded testimony*

54. In respect of the admission into evidence of prior recorded testimony, the Chamber recalls the primacy of orality and the right of the accused to examine or have examined witnesses against him, in accordance with Article 67(1)(e) of the Statute.

55. If the witness who gave the previously recorded testimony is available and expected to testify before the Trial Chamber, the Rule 68 application shall be filed within 21 days of the date the witness is scheduled to appear, with any objections thereto filed no later than 10 days after notification.

56. If the witness is not available within the meaning of Rule 68 of the Rules and is therefore not expected to testify, the Rule 68 application may be filed at any time, with objections thereto filed no later than 15 days after notification.

57. Such application(s) shall be filed together with copies of the previously recorded testimony and shall identify precisely which passages the party wishes to tender into evidence. If these passages contain references to other material available to the calling party, without which the passages would not be understandable, these materials are to be attached to the application.

iii. *Submission of evidence not through a witness*

58. In principle, every item of evidence should be introduced through a witness. However, should a party wish to submit evidence not through a witness, an application to do so shall include:

(i) A description of the item;

(ii) An averment as to its authenticity;

(iii) The reason the item is not introduced through a witness;

(iv) Reasons as to the item's relevance and probative value;

(v) The date on which it was previously disclosed to the other parties; and,

(vi) If applicable, an index of the most relevant sections of the item.

59. Should the LRV wish to make such an application, it may do so one month before the Prosecution is expected to conclude its presentation of evidence. The LRV shall provide the aforementioned information together with an averment indicating why the material proposed is relevant to the victims' interests and how its admission by the Chamber would contribute to the determination of the truth.

iv. ***Pattern of conduct evidence***

60. The Chamber has taken note of the Prosecution's proposal that the Chamber set out criteria under which 'pattern of conduct' evidence would be admissible if relevant. The Chamber decides not to set out criteria in advance. It will rule on the admissibility of such evidence on a case-by-case basis, after having heard submissions from the parties and the LRV.

v. ***Judicial notice***

61. In accordance with Article 69(6) of the Statute, and as a tool for expediting the proceedings, the Chamber may raise *proprio motu* or a party may request that the Chamber take judicial notice of facts of common knowledge. Prior to rendering any decision to take judicial notice of any facts of common knowledge, the Chamber will receive submissions from the parties and the LRV.

I. Protective measures

62. Any applications for in-court protective measures, including those made pursuant to Rules 87 and 88 of the Rules, shall be made as soon as possible to

allow the Chamber to receive submissions on the request and to allow the Victims and Witnesses Section to fulfil its mandate.

63. Rule 87 applications shall be filed confidentially, but not ex parte. The information which the applying party seeks to withhold from the other party shall be provided in an *ex parte* annex to the application, which shall include the justification for its *ex parte* designation.

J. Private and closed session

64. Insofar as possible, witness testimony shall be given in public. Requests for private and/or closed sessions shall be made in a neutral and objective way, if possible, referring to the topics that will be covered. To the extent possible, the parties are directed to group identifying questions together to avoid unnecessary recourse to closed and/or private session.

K. Transcripts

65. The Registry shall publish the public redacted version of the transcripts within two days of the notification of the edited confidential version. Thereafter, the calling party shall review the transcript and propose a lesser redacted version within one week of notification by the Registry. Within 3 days of receiving the proposed lesser-redacted version, the other parties may raise any objections. Should no objections to the proposed lesser-redacted version be made, the Registry shall file it in the record of the case with the appropriate document number designation.

66. Requests for corrections to the transcript shall be submitted to the Registry within five working days from the notification of the edited version of the transcript. The requests to the Registry shall refer to the edited version of the transcript and contain a table providing: (i) full reference of the transcript, date and the case name, (ii) the passage extracted from the edited version of

the transcript, containing the discrepancies to be reviewed, (iii) the pages and lines of the passage to be reviewed, and (iv) the language originally used by the speaker. The Registry shall apply any corrections to the transcript in accordance with its normal methods.

L. Legal Representation

67. Concerning the legal representation of victims, the Chamber recalls that it received the Registry Report[18] and the related LRV Submissions.[19]

68. Pursuant to relevant decisions by the Single Judge of Pre-Trial Chamber I,[20] the LRV team has been headed by, Ms Paolina Massidda, Principal Counsel of the OPCV, and assisted by a team member in Côte d'Ivoire. This team has been representing victims in the *Gbagbo* case since June 2012, and in the *Blé Goudé* case since June 2014, and is familiar with the record of the case and the procedural history.

69. The Chamber also notes the Registry's recommendation to maintain the current system of legal representation during the trial proceedings,[21] which is based on the outcome of a survey conducted amongst a group of victims. [22] The vast majority (91%) of the victims consulted expressed their wish to retain the current LRV.[23] The Chamber also notes the LRV Submissions – that the composition of the team including a person who is located in Côte d'Ivoire

[18] Registry's Report, ICC-02/11-01/15-49-Red.
[19] LRV Submissions, ICC-02/11-01/15-53-Red.
[20] Decision on Victims' Participation and Victims' Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings, Pre-Trial Chamber I, 4 June 2012, ICC-02/11-01/11-138 and confidential annexes; Decision on victims' participation in the pre-trial proceedings and related issues, 11 June 2014, ICC-02/11-02/11-83.
[21] Registry's Report, ICC-02/11-01/15-49-Red, para. 32.
[22] Registry's Report, ICC-02/11-01/15-49-Red, paras 6, 17-28.
[23] Registry's Report, ICC-02/11-01/15-49-Red, para. 23.

and that the Principal Counsel herself travels frequently to Côte d'Ivoire – ensures effective and regular contact with the victims.[24]

70. Under these circumstances, the Chamber finds that the current system meets all of the requirements for effective and fair representation of victims, and decides that it should be maintained during trial proceedings.

[24] LRV Submissions, ICC-02/11-01/15-53-Red, paras 7-24.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ADOPTS the aforementioned directions concerning the conduct of proceedings;

DECIDES that the current system of legal representation of victims should be maintained during trial proceedings; and

DECIDES that Ms Paolina Massidda, assisted by a team member in Côte d'Ivoire, shall continue representing the victims admitted to participate in the trial proceedings.

Done in both English and French, the English version being authoritative

Judge Geoffrey Henderson, Presiding Judge

Judge Olga Herrera Carbuccia **Judge Bertram Schmitt**

Dated 03 September 2015

At The Hague, The Netherlands