

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

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

Date: **09 April 2015**

TRIAL CHAMBER I

Before:

**Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Bertram Schmitt**

SITUATION IN COTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLE GOUDE***

**Confidential
With 1 confidential annex**

Defence submission on the proposed Protocol on dual status witnesses

Source: Defence of Mr Charles Blé Goudé

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

The Office of the Prosecutor

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Amicus Curiae

REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The present written submission and its annex are hereby filed as confidential pursuant to regulation 23(2) bis of the Regulations of the Court as they refer to *inter partes* discussions.

I. Procedural history

2. On 4 December 2014, in the *Gbagbo* case, the Single Judge held a Status Conference¹ during which the "Victims and Witnesses Unit's Proposed Mechanisms for Exchange of Information on individuals Enjoying Dual Status" ("the Protocol on dual status witnesses")² was discussed.
3. On 18 December 2014, the Single Judge directed the Office of the Prosecutor ("the OTP"), the Defence team for Mr. Gbagbo ("the Gbagbo Defence"), the Legal Representative of Victims ("the LRV") and the Victims and Witnesses Unit ("the VWU") to expeditiously conclude discussions on several protocols, including the Protocol on dual status witnesses, by 27 February 2015.³
4. The OTP and the LRV submitted a joint request for an extension of time to file their submissions until 6 March 2015.⁴ The Gbagbo Defence did not oppose as long as it was also granted the same extension of time.⁵ With leave from the Chamber,⁶ the OTP,⁷ the Gbagbo Defence⁸ and the LRV⁹ filed their

¹ Transcript of Hearing dated 4 December 2014, ICC-02/11-01/11-T-27-CONF-ENG ET, pages 14-51.

² Proposed mechanisms for exchange of information on individuals enjoying dual status, 28 November 2014, ICC-02/11-01/11-731-Anxl.

³ Order setting deadlines for the filing of submissions on outstanding protocols, 18 December 2014, ICC-02/11-01/11-739.

⁴ Joint request of the Common Legal Representative of victims and the Prosecution for an extension of time to file their submissions on the outstanding protocols, ICC-02/11-01/11-785-Conf (a public redacted version was filed on 12 March 2015, t ICC-02/11-01/11-785-Red).

⁵ Trial Chamber I, Single Judge, Order setting deadlines for submissions on certain pending matters, 17 March 2015, ICC-02/11-01/15-7, para. 7.

⁶ Decision on Requests for an extension of time to submit observations on the outstanding protocols, 4 March 2015, ICC-02/11-01/11-796.

submissions on 6 March 2015. The VWU filed its submissions on 2 March 2015.¹⁰

5. On 22 December 2014, the Prosecutor requested the Chamber to join the *Gbagbo* and the *Blé Goudé* cases.¹¹
6. On 11 March 2015, Trial Chamber I ("the Chamber") issued the "Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters" ("the Joinder Decision"),¹² which ordered the joinder of cases.
7. On 17 March 2015, the Single Judge issued the "Order setting deadlines for submissions on certain pending matters",¹³ which ordered "the Blé Goudé Defence to file any observations [...] on the Protocol on dual status witnesses by 9 April 2015."¹⁴

⁷ Prosecution's Submissions of the proposed mechanisms for exchange of information on individuals enjoying dual status and on the Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses, 6 February 2015, ICC-02/11-01/11-798.

⁸ Soumissions de la Défense relatives à l'adoption du Protocole portant sur « des mécanismes régulant l'échange d'informations sur les personnes possédant la double qualité de victime et de témoin », 6 February 2015, ICC-02/11-01/11-801-Conf, with confidential annex.

⁹ Further submissions of the Common Legal Representative of victims pursuant to the order setting deadlines for the filing of submissions on outstanding protocols (ICC-02/11-01/11-739), 6 March 2015, ICC-02/11-01/11802-Conf.

¹⁰ Victims and Witnesses Unit's submission of the proposed mechanisms for exchange of information on individuals enjoying dual status pursuant to Order ICC-02/11-01/11-739, with public annex, 2 March 2015, ICC-02/11-01/11-790.

¹¹ Prosecution's Request to join the cases of *The Prosecutor v. Laurent GBAGBO* and *The Prosecutor v. Charles BLE GOUDÉ*, 22 December 2014, ICC-02/11-02/11-194.

¹² Trial Chamber I, Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters, 11 March 2015, ICC-02/11-02/11-222, ICC-02/11-01/11-810 and ICC-02/11-01/15-1.

¹³ ICC-02/11-01/15-7.

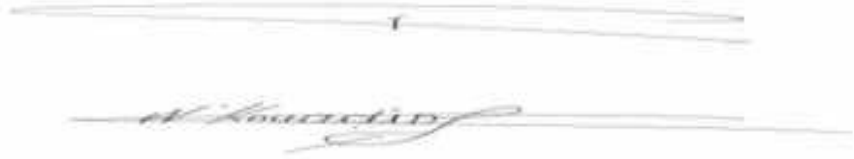
¹⁴ *Ibid.*

II. Observations

8. The Defence submits its observations by way of the attached annex, Annex 1. The Defence uses as its template the proposed protocol from VWU, filing ICC-02/11-01/11-790-Anx1-Corr. Requested changes to the Protocol on dual status witnesses are in red with commentary below the request to elaborate on the change. When the changes concern only part of a section, they are provided in capitals. In some instances, the Defence sees no other alternative but to remove completely sections of the proposed Protocol on dual status witnesses. As with the alterations, the Defence supplies commentary as to why it feels that part of the protocol should be removed.
9. Since the consultations between the OTP, Gbagbo Defence, LRV and VWU occurred before the joinder, the Defence is not privy to stipulations in relation to definitions for the Protocol on dual status witnesses. The proposed protocol from the VWU does not define who the "legal representative" is. The Defence understands this term to be the same as the commonly used term "Legal Representative of Victims" and nothing else. If the term legal representative is to mean anything other than the Legal Representative of Victims, the Defence does not agree to the Protocol on dual status witnesses in its entirety due to the absence of any legal safeguards, i.e. binding adherence to confidentiality of the information discussed within the protocol.

III. Relief

10. The Defence respectfully requests that the Chamber implement its proposed changes to the Protocol on dual status witnesses.



A handwritten signature in dark ink, appearing to read "Mr. Knoop", is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mr. Knoop, Lead Counsel and Mr. N'Dry, Co-Counsel

Dated this 9 April 2015.

At The Hague, the Netherlands