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

Date: **26 June 2015**

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ***

Public

Registry's observations on the "Request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the applications of dual status individuals" (ICC-02/11-01/15-85)

Source: Registry

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

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

NOTING the Registry’s observations notified in the record of the case *The Prosecutor v. Laurent Gbagbo* (the “Gbagbo case”), on 3 February 2015 (the « 3 February 2015 Observations »), in which the Registry opposed the use of pseudonyms for the intermediaries of the Victims Participation and Reparations Section (the “VPRS”);¹

NOTING the Decision on victim participation issued by Trial Chamber I (the “Chamber”) in the Gbagbo case on 6 March 2015, deciding *inter alia* that the 198 applicants granted victim status at the pre-trial stage of the Gbagbo case are authorised to participate in the trial proceedings and instructing the Registry to transmit to the Defence, in consultation with the Legal Representative of the Victims (the “LRV”), lesser redacted versions of these applications, while recalling that it is for the Prosecution to disclose lesser redacted versions of applications for participation of dual status witnesses in accordance with its disclosure obligations (the “6 March 2015 Decision”);²

NOTING the LRV’s Request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the applications of dual status individuals, notified on 8 June 2015 (the “LRV’s Request”);³

NOTING the Chamber’s communication of 25 June 2015 to the Registry, whereby the Single Judge informed the Registry that it may file observations in respect of the matter raised in the LRV’s Request, by 26 June 2015;⁴

NOTING articles 68(1) and 64(2) of the Rome Statute (the “Statute”), rule 81(4) of the Rules of Procedure and Evidence (the “Rules”) and regulation 24*bis* of the Regulations of the Court;

¹ ICC-02/11-01/11-757.

² ICC-02/11-01/11-800, para. 56.

³ ICC-02/11-01/15-85.

⁴ Email of 25 June 2015 from Legal Officer of the Chamber to the Legal Officers of the VPRS in response to inquiry from the VPRS.

CONSIDERING that on 8 June 2015, the Prosecution disclosed to the Defence team of Mr Gbagbo and that of Mr Blé Goudé (the “Defence”) 19 applications for participation of dual status individuals, of which twelve contained redactions pertaining to identifying and contact information of the intermediaries mentioned in these applications, and which were applied by the Prosecution at the request of the LRV;⁵

RESPECTFULLY SUBMITS AS FOLLOWS:

1. At the outset, the Registry submits that it concurs with the LRV that the identifying and contact information of intermediaries mentioned in victim applications for participation and/or reparations should remain redacted. As recalled in the Registry’s Observations,⁶ a distinction should be made between the role played by intermediaries assisting a Party to the proceedings in conducting its investigations, be it the Prosecutor or the Defence, and intermediaries assisting victims in the context of either the participation or reparations process. The role of intermediaries working in coordination with the VPRS is confined to informing and assisting potential victims to complete and submit an application for participation and/or reparations rather than supporting a Party to the proceedings in collecting or giving evidence on either points of fact or law. Nor would the VPRS intermediaries know, at the time they assist an applicant to fill in application forms or afterwards, that individuals they have assisted would be called by one or the other Party at some stage of the proceedings to provide evidence.
2. Furthermore, the Registry notes that VPRS intermediaries have not been given the opportunity to provide their consent for their identity to be disclosed to the Defence. In these circumstances, the Registry concurs with the

⁵ ICC-02/11-01/15-86.

⁶ ICC-02/11-01/11-757, para. 7.

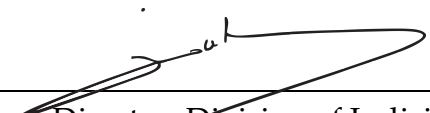
LRV that it is difficult to conclude that the intermediaries identified in the 12 abovementioned applications for participation have “agreed to be part of the Court process”.⁷

3. Moreover, in compliance with article 68(1) of the Statute, which provides *inter alia* that ensuring that victims and witnesses are appropriately protected is a responsibility of the Court as a whole, the VPRS has established good practices guidelines intended for intermediaries wishing to collaborate with the VPRS for the purpose of ensuring that both themselves and the victims they assist are protected from being exposed to any potential security risk. Adopting a low profile when interacting with applicants is part of these good practices that the VPRS intermediaries are advised to observe both for their own security and for that of the victims. As experienced by the VPRS staff, the political context in Côte d’Ivoire, which remains deeply polarised, and the perception by part of the Ivoirian population that the Court is not impartial creates the risk for intermediaries working with the VPRS to be perceived as potential witnesses or collaborators with the Court. Accordingly, as already stated by the Registry in its 3 February 2015 Observations,⁸ should the intermediary assisting an applicant in completing an application form for participation or reparations be identified, either by way of pseudonym or by lifting the redactions applied to identifying information concerning them, it is the Registry’s view that this could not only lead to the identification of the persons he or she assisted, but in light of the political environment, poses a real risk to the safety, dignity, privacy and well-being of the intermediary in question and the applicants he or she has assisted, be they witnesses or not.

⁷ ICC-02/11-01/15-85, paras 23-24.

⁸ ICC-02/11-01/11-757, para. 9.

4. In addition, the Registry submits that the disclosure of identifying and contact information of its intermediaries to the Defence could jeopardize the VPRS' activities in the field since it is likely that VPRS intermediaries may decide to interrupt their collaboration with the VPRS and hence their interactions with potential applicants, for fear of being identified and perceived as supporting the Prosecution's investigations. All the more so because the VPRS works with a limited pool of intermediaries assisting a large number of victims. Similarly, as stated by the LRV, revealing the identity of the VPRS intermediaries to the Defence may dissuade potential victims to engage in the participation process, or even lead to the withdrawal of certain participating victims from the participation process out of fear for their safety.⁹
5. For the foregoing reasons, the Registry respectfully submits that the redactions applied to the identifying and contact information of the intermediaries mentioned in the applications for participation of dual status individuals should be maintained.



Marc Dubuisson, Director, Division of Judicial Services
per delegation of Herman Von Hebel, Registrar

Dated this 26 June 2015

At The Hague, the Netherlands

⁹ ICC-02/11-01/15-85, para. 29.