

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15
Date: 31 August 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Single Judge

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

**Public
With one public annex**

**Decision adopting mechanisms for exchange of information on individuals
enjoying dual status**

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
Mr Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

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

Mr Nigel Verill

Detention Section

**Victims Participation and Reparations
Section**

Others

Judge Geoffrey Henderson, acting as Single Judge on behalf of Trial Chamber I (respectively, 'Single Judge' and 'Chamber')¹ of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 64(2), (3)(a) and (6)(e), 67 and 68 of the Rome Statute ('Statute'), issues the following 'Decision adopting mechanisms for exchange of information on individuals enjoying dual status' ('Protocol').

I. Procedural History

1. On 27 November 2014, in the case of *The Prosecutor v. Laurent Gbagbo* ('Gbagbo case'), the Single Judge scheduled a status conference on 4 December 2014, for the purpose of, *inter alia*, discussing protocols to be adopted in the case. The Single Judge instructed the Victims and Witnesses Unit ('VWU') to file on the record of the case the proposed mechanisms for exchange of information on individuals with dual status by 28 November 2014 ('Proposed Mechanisms').²
2. On 28 November 2014, the VWU filed the Proposed Mechanisms as adopted in the case of *The Prosecutor v. Thomas Lubanga Dyilo*.³ The French translation thereof was notified on 12 February 2015.⁴
3. On 4 December 2014, in the *Gbagbo* case, the Single Judge held the aforementioned status conference, during which the Proposed Mechanisms were discussed.⁵
4. On 18 December 2014, the Single Judge instructed the Office of the Prosecutor ('Prosecution'), the Defence team for Mr Gbagbo ('Gbagbo Defence'), the Legal

¹ Where 'Chamber' is used in this decision it refers to both Trial Chamber I as composed by the Presidency's 'Decision replacing a judge in Trial Chamber I', 18 March 2015, ICC-02/11-01/15-8-AnxI, and to the chamber in its previous composition.

² Scheduling order and agenda for the status conference on 4 December 2014, ICC-02/11-01/11-730.

³ Victims and Witnesses Unit's Proposed Mechanisms for Exchange of Information on individuals Enjoying Dual Status, ICC-02/11-01/11-731 with one public annex.

⁴ ICC-02/11-01/11-731-AnxI-tFRA.

⁵ Transcript of Hearing dated 4 December 2014, ICC-02/11-01/11-T-27-Conf-Eng ET, notably pages 16, 30-31 and 35-36.

Representative of Victims ('LRV') and the VWU to submit written observations on the Proposed Mechanisms by 27 February 2015.⁶

5. On 27 February 2015, the VWU submitted its observations and an amended version of the Proposed Mechanisms ('Proposed Protocol').⁷
6. Having been granted an extension of time,⁸ on 6 March 2015, the Prosecution⁹ and the LRV¹⁰ submitted their observations on the Proposed Protocol (respectively 'Prosecution Observations' and 'LRV Observations').
7. On that same date, having also been granted the same extension of time, the Gbagbo Defence filed its proposed protocol ('Gbagbo Defence Proposed Protocol') along with submissions thereon ('Gbagbo Defence Observations'), commenting on the Proposed Mechanisms.¹¹
8. On 11 March 2015, the Chamber issued a decision granting the Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé*.¹²

⁶ Order setting deadlines for the filing of submissions on outstanding protocols, ICC-02/11-01/11-739.

⁷ Victims and Witnesses Unit's submission on the proposed mechanisms for exchange of information on individuals enjoying dual status pursuant to Order ICC-02/11-01/11-739, ICC-02/11-01/11-790 ('VWU Observations') with one public annex (notified on 2 March 2015). A corrected version of the annex was filed on 3 March 2015 and notified on 4 March 2015 (ICC-02/11-01/11-790-Anx1-Corr).

⁸ See Email communication from Legal Officer of the Chamber on 27 February 2015 at 14:44.

⁹ 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, ICC-02/11-01/11-798.

¹⁰ 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), ICC-02/11-01/11-802-Conf. A public redacted version was filed on 12 March 2015 (ICC-02/11-01/11-802-Red).

¹¹ *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 témoins »*, 6 March 2015, ICC-02/11-01/11-801-Conf with one confidential annex. A public redacted version was filed on 23 March 2015 (ICC-02/11-01/11-801-Red). The Single Judge stresses that the format of documents filed by the parties should comply with Regulation 36(3) of the Regulations of the Court. In this regard, the Single Judge clarifies that observations made by the Gbagbo Defence in the annex to its submissions have been taken into account, but that it was impossible for the Single Judge to refer to them precisely as there were no accurate numbering system.

¹² 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 with one public annex.

9. On 17 March 2015, the Single Judge instructed the Defence team for Mr Blé Goudé ('Blé Goudé Defence') to submit any observations on the Proposed Protocol by 9 April 2015 (the Gbagbo Defence and Blé Goudé Defence are collectively referred to as 'Defence').¹³
10. On 9 April 2015, the Blé Goudé Defence filed its observations on the Proposed Protocol ('Blé Goudé Defence Observations')¹⁴ to which it annexed an amended protocol ('Blé Goudé Defence Proposed Protocol').¹⁵

II. Submissions and Analysis

11. The Single Judge has carefully reviewed all submissions made by the parties, participants VWU and will only rule on the disagreements raised.

1) Information to be provided to the Registry

12. The Single Judge has taken note of the Blé Goudé Defence's objection to the Victims Participation and Reparations Section ('VPRS') being informed of the dual status of an individual.¹⁶ However, the Single Judge has noted that the other parties, the LRV and VWU have not objected to this provision and is not persuaded by the arguments put forward by the Blé Goudé Defence. Consequently, the Single Judge decides that paragraph 1 (a) shall thus be retained in the Protocol.

2) Dual status witnesses participating in the International Criminal Court Protection Programme ('ICCPP')

13. In relation to paragraph 2 (c) of the Proposed Protocol, which provides that the VWU is not obliged to disclose the details of making contact with a

¹³ Order setting deadlines for submissions on certain pending matters, ICC-02/11-01/15-7.

¹⁴ Defence submission on the proposed Protocol on dual status witnesses, ICC-02/11-01/15-26-Conf with one confidential annex.

¹⁵ Annex to Defence submissions on the proposed Protocol on dual status witnesses, ICC-02/11-01/15-26-Conf-Anx1.

¹⁶ Blé Goudé Defence Proposed Protocol, ICC-02/11-01/15-26-Conf-Anx1, page 2.

protected individual, all parties and participants wish that the following language be added: 'unless the Chamber orders otherwise'.¹⁷

14. The VWU objects to this amendment and submits that disclosing confidential information to the parties and to the LRV in certain circumstances could jeopardise the operation of the program and the security of protected witnesses.¹⁸

15. The Single Judge considers that the provision, as reworded by the parties and the LRV, supports the principle that non-disclosure of the details of contact of protected witnesses is the norm, and acknowledges the discretion of the Chamber to decide otherwise, when circumstances so justify. Given the Chamber's own obligations pursuant to Article 68(3) of the Statute, the Single Judge is not persuaded that this amendment could indeed jeopardise witnesses' security and finds it appropriate to include it.

3) Communication between the Prosecution, the Defence and the legal representative of a dual status witness

16. The Prosecution and the LRV suggest the inclusion of a provision imposing on the Defence the obligation to inform the Prosecution of the dual status of an individual it will call to testify so as to mirror the provision imposing such obligation on the Prosecution.¹⁹

17. The Gbagbo Defence agrees with this suggestion and proposes two additional adjunctions to this section of the Proposed Protocol, namely that: i) the Prosecution informs the Defence of the dual status of a witness as soon as it

¹⁷ Prosecution Observations, ICC-02/11-01/11-798, para. 10; Gbagbo Defence Observations, ICC-02/11-01/11-801-Red, para. 18; Gbagbo Defence Proposed Protocol, ICC-02/11-01/11-801-Conf-Anx, annotations on para. 2; Blé Goudé Proposed Protocol, ICC-02/11-01/15-26-Conf-Anx1, page 2; LRV Observations, ICC-02/11-01/11-802-Red, para. 15.

¹⁸ VWU Observations, ICC-02/11-01/11-790, paras 1-2.

¹⁹ Prosecution Observations, ICC-02/11-01/11-798, para. 11; LRV Observations, ICC-02/11-01/11-802-Red, para. 15.

becomes aware of it; and ii) the Defence be provided with a lesser redacted version of the relevant application for participation.²⁰

18. The Blé Goudé Defence disagrees with the Prosecution and the Gbagbo Defence on a provision imposing an obligation on the Defence to inform the Prosecution of the dual status of its witness, arguing that it would oblige the Defence to disclose its case strategy prematurely.²¹

19. The Single Judge agrees with the Prosecution and the Gbagbo Defence that the Defence should notify not only the LRV but also the Prosecution of the dual status of any of the witnesses it will call. However, the Single Judge considers that the provision as drafted is too broad as it seems to include any individual the Defence has interviewed and may consider calling, even if the decision to call the individual as a witness has not yet been made. The Single Judge has reworded the provision, so as to mirror that pertaining to the Prosecution's obligation.

20. With regard to the Gbagbo Defence's proposal that the Prosecution should inform the Defence of the dual status of a witness it will call 'as soon as' it becomes aware of it, the Single Judge agrees that it would be beneficial for the parties and participants for the Protocol to specify a timeframe within which the calling party should inform the other parties and participants of the dual status of one of its witnesses. Paragraph 4 (a) of the Protocol has been amended accordingly.

21. Further, in relation to the Gbagbo Defence's second suggestion that the Prosecution should transmit the victim application form to the Defence and that the LRV should transmit the lesser redacted version of it, the Single Judge refers to its 'Decision on victim participation'. Therein, it indicated that it was

²⁰ Gbagbo Defence Observations, ICC-02/11-01/11-801-Red, paras 23-26 and 31; Gbagbo Defence Proposed Protocol, ICC-02/11-01/11-801-Conf-Anx, annotations on paras 4 (a) and 5(b).

²¹ Blé Goudé Proposed Protocol, ICC-02/11-01/15-26-Conf-Anx1, page 3.

for the Prosecution to disclose lesser redacted versions of applications for participation of dual status witnesses, thus in accordance with its disclosure obligations and in a manner consistent with the 'Protocol establishing a redaction regime [...]'.²²

4) Modalities of contact with individuals with dual status

22. As to the Blé Goudé Defence's objection to informing the LRV of its intention to contact an individual with dual status on the basis that it would oblige the Defence to disclose its case strategy prematurely,²³ the Single Judge is not persuaded that the Defence strategy would be revealed by the mere fact of informing the LRV of their intention to contact the dual status individual.

23. The Defence takes issue with paragraph 6 (b) of the Proposed Protocol that reads as follows:

If a person with dual status participating in ICCPP requests to contact the parties or participants, the VWU will facilitate the contact which will not be revealed to other parties and participants.

24. The Gbagbo Defence submits that this provision lacks clarity, as it seems to also foresee instances in which an ICCPP dual status witness wishes to contact a party other than the calling party or the LRV.²⁴ The Blé Goudé Defence appears to understand that said provision does foresee such cases and requests that in such a case, the calling party be informed.²⁵

25. The Single Judge notes the lack of clarity of this paragraph and agrees with the modification suggested by the Blé Goudé Defence. Paragraph 6 (b) of the Proposed Protocol is primarily intended at regulating instances in which an

²² Decision on victim participation, 6 March 2015, ICC-02/11-01/11-800, paras 55-56 ('Decision on victim participation').

²³ Blé Goudé Defence Proposed Protocol, ICC-02/11-01/15-26-Conf-Anx1, pages 3-4.

²⁴ Gbagbo Defence Observations, ICC-02/11-01/11-801-Red, paras 37-39; Gbagbo Defence Proposed Protocol, ICC-02/11-01/11-801-Conf-Anx, annotations on para. 6 (b).

²⁵ Blé Goudé Defence Proposed Protocol, ICC-02/11-01/15-26-Conf-Anx1, page 3.

ICCPP witness wishes to contact the calling party, in which case the 'other parties and participants' shall not be informed.

26. However, this provision does not exclude from its scope, instances in which an ICCPP dual status witness wishes to contact a party other than the party calling him/her. In these circumstances, the Single Judge agrees with the Blé Goudé Defence that the calling party shall be made aware of the mere fact that the witness it intends to call and who has been admitted to participate in the ICCPP, has contacted the opposing party. Paragraph 5(c) has been amended accordingly.

27. Moreover, the Single Judge rejects the Defence arguments against paragraphs 6 (c) and 6 (d) of the Proposed Protocol which imposes an obligation on any party that has contacts with a dual status individual, to inform the LRV.²⁶ Indeed, the Single Judge finds that, as the representative of the said victim in the proceedings before the Court, the LRV shall be informed.

28. Finally, contrary to the Gbagbo Defence's proposals, the Single Judge is not persuaded of the need to add a provision recalling the parties' and participants' obligation to comply with the Protocol on contact between a party and a witness not being called by that party. Instead the Single Judge stresses that, to the extent that the two protocols overlap, the parties and participants are to act in accordance with the obligations set out in the respective protocols.

²⁶ Gbagbo Defence Observations, ICC-02/11-01/11-801-Red, paras 40-42; Gbagbo Defence Proposed Protocol, ICC-02/11-01/11-801-Conf-Anx, annotations on paras 6 (c) and 6 (d); Blé Goudé Defence Proposed Protocol, ICC-02/11-01/15-26-Conf-Anx1, page 4.

5) Contacts between a witness with dual status and his or her legal representative

29. Having reviewed the parties' submissions,²⁷ the Single Judge considers that the Proposed Protocol should be retained as such.

6) Provision of a copy of the statement and other materials to the LRV and presence of the LRV at the medical examination

30. Having carefully taken into account the observations made by the Defence on these two sections of the Protocol,²⁸ the Single Judge finds that the text of the Proposed Protocol shall be retained.

7) Attendance of the LRV at interviews with dual status witnesses

31. Having considered both the Defence's observations²⁹ and the LRV Observations,³⁰ the Single Judge has amended the Proposed Protocol, so as to ensure consistency with the Protocol on contact between a party and a witness not being called by that party.

²⁷ Gbagbo Defence Observations, ICC-02/11-01/11-801-Red, paras 44-46; Gbagbo Defence Proposed Protocol, ICC-02/11-01/11-801-Conf-Anx, annotations on paragraph 7 (a); Blé Goudé Defence Proposed Protocol, ICC-02/11-01/15-26-Conf-Anx1, page 4.

²⁸ Gbagbo Defence Observations, ICC-02/11-01/11-801-Red, paras 47-53; Gbagbo Defence Proposed Protocol, ICC-02/11-01/11-801-Conf-Anx, annotations on paras 8 and 9; Blé Goudé Defence Proposed Protocol, ICC-02/11-01/15-26-Conf-Anx1, pages 4-6.

²⁹ Gbagbo Defence Observations, ICC-02/11-01/11-801-Red, paras 54-56; Gbagbo Defence Proposed Protocol, ICC-02/11-01/11-801-Conf-Anx, annotations on para. 10; Blé Goudé Defence Proposed Protocol, ICC-02/11-01/15-26-Conf-Anx1, pages 6-7.

³⁰ LRV Observations, ICC-02/11-01/11-802-Red, para. 34.

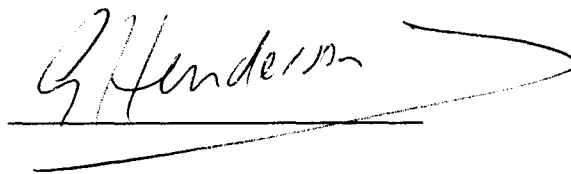
FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

ADOPTS the Protocol, as set out in the annex to the present decision;

INSTRUCTS the Gbagbo Defence to file a public redacted version of the Gbagbo Defence Proposed Protocol within 15 days of notification of this decision; and

INSTRUCTS the Blé Goudé Defence to file a public redacted version of the Blé Goudé Defence Observations and of the Blé Goudé Defence Proposed Protocol within 15 days of notification of this decision.

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

A handwritten signature in black ink, appearing to read 'G Henderson', is written over a horizontal line. A long, sweeping horizontal stroke extends from the end of the signature line to the right.

Judge Geoffrey Henderson, Single Judge

Dated 31 August 2015

At The Hague, The Netherlands