

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15
Date: 2 September 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

**Decision on the Legal Representative of Victims' requests to maintain redactions
to information relating to certain intermediaries**

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 Mr 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 Verrill

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

Judge Geoffrey Henderson, acting as Single Judge on behalf of Trial Chamber I ('Single Judge' and 'Chamber', respectively) 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), 64(6)(c)(e), 67 and 68(1) of the Rome Statute ('Statute') and Rules 76 to 77 and 81(4) of the Rules of Procedure and Evidence ('Rules'), issues the following 'Decision on the Legal Representative of Victims' requests to maintain redactions to information relating to certain intermediaries'.

I. Procedural history

1. On 8 June 2015 the Legal Representative of Victims ('LRV') filed a 'Request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the applications of dual status individuals' ('First LRV Request').¹
2. On 9 June 2015, the Office of the Prosecutor ('Prosecution') disclosed, *inter alia*, twelve applications pursuant to Rule 77 of the Rules, indicating that it had applied, upon request of the LRV, redactions that coincided with the First LRV Request.²
3. On 23 June 2015, the defence team for Mr Gbagbo ('Gbagbo Defence'),³ the defence team for Mr Blé Goudé ('Blé Goudé Defence', and together with Gbagbo Defence, 'Defence')⁴ and the Prosecution⁵ filed their responses to the First LRV Request.

¹ ICC-02/11-01/15-85 with Annexes 1-12 confidential *ex parte*, available to the LRV and the Prosecution only.

² Prosecution's Communication of Evidence Disclosed to the Defence on 8 June 2015, 9 June 2015, ICC-02/11-01/15-86, para. 3.

³ *Réponse de la Défense à la "Request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the application of dual status individuals" (ICC-02/11-01/15-85) déposée par la Représentante légale des victimes le 8 juin 2015*, 23 June 2015, ICC-02/11-01/15-98 ('Gbagbo Defence Response').

⁴ Defence Response to the 'Request to maintain redactions to the identifying and contact information of intermediaries mentioned in the applications of dual status individuals' (ICC-02/11-01/15-85)', 23 June 2015, ICC-02/11-01/15-100 ('Blé Goudé Defence Response').

4. Having been granted leave to reply,⁶ the LRV, on 26 June 2015, filed its reply to the responses by the Gbagbo Defence and the Blé Goudé Defence respectively.⁷
5. On the same date, the Registry, having been authorised to do so,⁸ filed its observations on the First LRV Request.⁹
6. On 7 July 2015 the LRV filed a request to maintain similar redactions to an application for participation of another individual with dual status ('Second LRV Request', and together with the First LRV Request, 'LRV Requests').¹⁰ Observations by the Blé Goudé Defence and the Gbagbo Defence were filed on 28 July 2015.¹¹
7. On 8 July 2015, the Prosecution informed the Chamber that it had disclosed the application for participation referred to in the Second LRV Request with the redactions sought to be maintained.¹²

II. Submissions

8. The LRV requests that the existing redactions to the identifying and contact information of the intermediaries mentioned in twelve applications for

⁵ Prosecution Response to the Common Legal Representative Request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the applications of dual status individuals, 23 June 2015, ICC-02/11-01/15-99.

⁶ E-mail from Legal Officer of Chamber to LRV on 25 June 2015 at 15:36 in response to the Application for leave to reply to Defence responses ICC-02/11-01/15-98 and ICC-02/11-01/15-100, 24 June 2015, ICC-02/11-01/15-102.

⁷ Reply to Defence responses ICC-02/11-01/15-98 and ICC-02/11-01/15-100, 26 June 2015, ICC-02/11-01/15-106-Conf ('LRV Reply'). A public redacted version was filed on the same day: ICC-02/11-01/15-106-Red.

⁸ E-mail from Legal Officer of Chamber to Registry on 25 June 2015 at 13:03.

⁹ 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), 26 June 2015, ICC-02/11-01/15-107 ('Registry Observations').

¹⁰ Second request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the applications of dual status individuals, 7 July 2015, ICC-02/11-01/15-126.

¹¹ Defence Response to the "Second request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the applications of dual status individuals" (ICC-02/11-01/15-126), ICC-02/11-01/15-167; *Réponse de la Défense à la "Second Request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the application of dual status individuals" (ICC-02/11-01/15-126) déposée par la Représentante légale des victimes le 7 juillet 2015*, ICC-02/11-01/15-166 ('Second Gbagbo Defence response').

¹² Prosecution's Communication of Evidence Disclosed to the Defence on 7 and 8 July 2015, ICC-02/11-01/15-128 and Annexes I and J.

participation of dual status witnesses be maintained.¹³ The LRV contends that identifying and contact information of intermediaries assisting dual status individuals in filling in victim application forms fall under category B.3. ('identifying and contact information of 'other persons at risk as a result of the activities of the Court') of the 'Protocol establishing a redaction regime [...] adopted by the Chamber ('Redaction Protocol') because the intermediaries: (i) have not agreed to be part of the Court process and may not even be aware of it; (ii) may be perceived as potential witnesses or collaborators with the Court; and (iii) are of no relevance to any known issue in the case.¹⁴ In addition, the LRV posits that the names of those assisting victims filling in application forms have been routinely redacted in other cases, and in the pre-trial proceedings of the present case.¹⁵

9. In the alternative, the LRV submits that redactions to identifying and contact information of Registry intermediaries must nonetheless be maintained as non-standard redactions (category C of the Redaction Protocol). The LRV claims that, in view of the limited pool of intermediaries, ongoing contact with the victims and application processes could be put at risk and that, by disclosing the identity of the intermediaries, the identities of applicants and victims could be discovered.¹⁶

10. The Gbagbo Defence submits that, in accordance with the Redaction Protocol, redactions should be justified and authorised individually by the disclosing party, providing the Defence with the necessary information to understand the documents disclosed, notably by replacing the redacted

¹³ First LRV Request, ICC-02/11-01/15-85, para 10; Second LRV Request ICC-02/11-01/15-126, para 13.

¹⁴ First LRV Request, ICC-02/11-01/15-85, paras 16-39.

¹⁵ First LRV Request, ICC-02/11-01/15-85, paras 16 and 19.

¹⁶ First LRV Request, ICC-02/11-01/15-85, paras 17, 40-59 and Second LRV Request ICC-02/11-01/15-126, para 16.

portions with pseudonyms.¹⁷ It considers that the First LRV Request ignores the procedures set out in the Redaction Protocol, and requests that the Chamber reject the First LRV Request as inadmissible.¹⁸ Moreover, the Gbagbo Defence claims that the redactions sought are covered by category A.5. of the Redaction Protocol. Accordingly, it is of the view that the Prosecution should have provided the Defence with pseudonyms for each intermediary involved.¹⁹

11. The Blé Goudé Defence submits that the LRV lacks the necessary legal standing to file requests for standard redactions and that it falls upon the Prosecution, as the disclosing party, to apply redactions in accordance with the provisions of the Redaction Protocol or to request that the Chamber authorises non-standard redactions, as the case may be.²⁰ The Blé Goudé Defence further submits that category B.3. does not apply to the requested redactions.²¹ It further claims that, failing a substantiated request from the Prosecution seeking authorisation for the application of non-standard redactions,²² any redactions of information relating to intermediaries applied to the twelve applications for participation should be lifted.²³

12. In reply to the contentions made by the Gbagbo and Blé Goudé Defence, the LRV submits that she had an obligation to ensure the protection of her clients' personal interests and that neither the Redaction Protocol nor the

¹⁷ Gbagbo Defence response, ICC-02/11-01/15-98, para 11 with reference to the Redaction Decision, ICC-02/11-01/11-737, paras 9, 21 and 26.

¹⁸ Gbagbo Defence response, ICC-02/11-01/15-98, paras 17-27; Second Gbagbo Defence response, ICC-02/11-01/15-166, para 16.

¹⁹ Gbagbo Defence response, ICC-02/11-01/15-98, paras 13-16. *See also*, para. 47. Second Gbagbo Defence response, ICC-02/11-01/15-166, paras 24-25.

²⁰ Blé Goudé Defence response, ICC-02/11-01/15-100, paras 11-14.

²¹ Blé Goudé Defence response, ICC-02/11-01/15-100, paras 5-22.

²² Blé Goudé Defence response, ICC-02/11-01/15-100, paras 34-44. *See also*, paras 2 and 22.

²³ Blé Goudé Defence response, ICC-02/11-01/15-100, para 45.

dual status of these individuals prevented her from submitting such request.²⁴

13. The Registry submits that, while part of the Court process, intermediaries assisting dual status witnesses in completing their applications, risk being perceived as potential witnesses or collaborators of the Court²⁵ and that their identification poses a real risk to the safety, dignity, privacy and well-being of the intermediary and the applicants, and could jeopardise the activities of the Victim Participation and Representation Section ('VPRS') in the field.²⁶

III. Analysis

14. The Single Judge recalls at the outset 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 and in a manner consistent with the Redaction Decision'.²⁷ The Single Judge also recalls the redaction requirements set out in its previous decisions.²⁸

15. The Single Judge notes that standard redactions under category B.3. of the Redaction Protocol cover the identifying and contact information of 'innocent third parties', to protect individuals who have not agreed to be part of the Court process, who may even not even be aware of it, and who may be placed at risk of because of a perception that they are potential witnesses or collaborators with the Court.²⁹ In this connection, the Single Judge observes that the term 'intermediary' is defined in the 'Guidelines Governing the Relations between the Court and Intermediaries'

²⁴ LRV reply, ICC-02/11-01/15-106-Conf, para 23-27.

²⁵ Registry observations, ICC-02/11-01/15-107, paras 2-3.

²⁶ Registry observations, ICC-02/11-01/15-107, paras 3-4.

²⁷ Decision on victim participation, 6 March 2015, ICC-02/11-01/11-800, para. 56.

²⁸ Decision on the Redaction Protocol, 15 December 2014, ICC-02/11-01/11-737 paras 8-11; Protocol Establishing a Redaction Regime ('Redaction Protocol'), ICC-02/11-01/11-737-AnxA, paras 48-50. *See also*, Decision on Prosecution requests on redactions, 19 May 2015, ICC-02/11-01/15-68-Conf-Exp, paras 15-17. A public redacted version has been filed on 21 July 2015: ICC-02/11-01/15-68-Corr-Red2.

²⁹ Redaction Protocol, ICC-02/11-01/11-737-AnxA, para. 40.

(‘Guidelines’)³⁰ as someone ‘who comes between one person and another; who facilitates contact or provides a link between one of the organs or units of the Court or Counsel on the one hand, and victims, witnesses, beneficiaries of reparations and/or affected communities more broadly on the other’. However, as stated in the Guidelines, not everyone who carries out these functions in cooperation with an organ or unit of the Court or Counsel will be considered intermediaries for the purposes of the Guidelines, and not all may have explicitly agreed to be part of the Court process.³¹

16. The Single Judge accepts that the intermediaries referred to in the LRV Requests may not necessarily have a formalised relationship with the Court, and that it is possible that some of the factors in category B.3. of the Redaction Protocol may indeed be relevant in assessing whether the requested redactions are warranted. However, the Single Judge considers that, through assisting individuals to complete application forms, the relevant intermediaries have engaged in the Court process, and he does not consider that they are therefore appropriately categorised as falling under category B.3 of the Redaction Protocol relating to ‘innocent third parties’.

17. Turning now to Gbagbo Defence’s contention that the same information should be redacted under category A.5 of the Redaction Protocol (‘identifying and contact information of intermediaries’)³² - the Single Judge notes that this category is limited to the redaction of information concerning

³⁰ Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries (March 2014) (‘Intermediaries Guidelines’), page 5. Available: http://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/strategies-and-guidelines/Documents/GRCI-Eng.pdf.

³¹ Intermediaries Guidelines, page 6.

³² Gbagbo Defence Response, ICC-02/11-01/15-98, paras 46-52.

intermediaries who assist in investigations³³ and that it seeks to ensure 'that intermediaries can continue assisting the disclosing party in the investigation in a safe and effective manner',³⁴ and is therefore not considered applicable in the present circumstances.

18. The Single Judge therefore concludes that the redactions sought do not fall under any of the standard categories of the Redaction Protocol.³⁵

19. However, the Single Judge notes that both the LRV and Registry have emphasised that there is a risk that the intermediaries 'may be perceived as potential witnesses or collaborators with the Court', and their identification thus poses a real risk to the safety, dignity, privacy and well-being of the intermediaries and the applicants, and could jeopardise the activities of the VPRS in the field.³⁶

20. Consequently, pursuant to the Chamber's obligations to protect victims and witnesses and to ensure the integrity of the proceedings under Articles 64(2) and 68(1) of the Statute, the Single Judge is of the view that applying the redactions sought is the most appropriate measure to protect the safety of the intermediaries, and also of other individuals who have applied or may apply for participation through these intermediaries or are otherwise in contact with these intermediaries in the field. In so finding, the Single Judge considers that the Defence has not demonstrated how the identity or contact information of these intermediaries is relevant to any known issues in this case. Noting further that the identity of the individuals with dual status has been disclosed to the Defence and that the redactions sought are of very

³³ Redaction Decision, ICC-02/11-01/11-737, paras 37-39.

³⁴ Redaction Protocol, ICC-02/11-01/11-737-AnxA, para 26; Redaction Decision, ICC-02/11-01/11-737, paras 37-41.

limited nature, the Single Judge is also satisfied that no undue prejudice will result from applying the redactions requested. This ruling is without prejudice to the lifting of these redactions at any further stage of the proceedings, either *proprio motu* or upon request of a party or participant, if the redacted information becomes relevant to a live issue in the case.

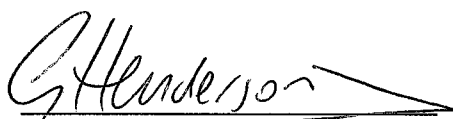
21. Consequently, the Single Judge grants the requests for redactions in relation to the thirteen applications for participation and authorises the Prosecution to maintain, on an ongoing basis, redactions to the identifying and contact information of intermediaries referred to in the material attached to the LRV Requests. However, in order to facilitate investigations and the Defence's ability to prepare for trial, the redacted identities of the intermediaries concerned should be substituted by pseudonyms for each individual intermediary.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the LRV Requests; and

AUTHORISES the redactions sought in accordance with the conditions set out in this decision.

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

A handwritten signature in black ink, appearing to read 'G Henderson', with a long horizontal line extending from the end of the signature.

Judge Geoffrey Henderson, Single Judge

Dated 2 September 2015

At The Hague, The Netherlands