

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/11-01/15
Date: **13 January 2016**

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

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

Public

**Public redacted version of 'Decision on Gbagbo Defence request for
implementation of certain protective measures to facilitate its investigations',
30 November 2015, ICC-02/11-01/15-351-Conf**

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 Verrill

Detention Section

**Victims Participation and Reparations
Section**

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), 67(1)(b), 68(1) and Part 9 of the Rome Statute, Rule 20 of the Rules of Procedure and Evidence ('Rules'), and Regulation 24 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Gbagbo Defence request for implementation of certain protective measures to facilitate its investigations'.

I. Procedural history and submissions

1. On 16 September 2015, the defence team for Mr Gbagbo ('Gbagbo Defence' or 'Defence') filed the '*Demande à la Chambre de mesures de protection de façon à permettre le travail d'enquête des équipes de Défense*' ('Request'),¹ in which it outlines various concerns relating to the security situation in Côte d'Ivoire, which it argues has severely compromised its investigations, and in particular, its ability to communicate securely. Accordingly, the Defence seeks that certain protective measures be implemented so as to guarantee the protection of potential witnesses and confidentiality of information during investigations. Specifically, the Defence requests the Chamber to: (i) order that the Registry and Defence jointly present to the Chamber, without delay, the best method to allow for encrypted communication by the Defence; (ii) communicate with the Ivorian and French authorities to outline, *inter alia*, the crucial importance of the Defence investigations and the consequences of hampering these; and (iii) suspend the trial commencement date until the Defence can investigate adequately.²
2. On 17 September 2015, the Office of the Prosecutor ('Prosecution') filed a response ('Prosecution Response'),³ in which it submits that the Request should be

¹ 16 September 2015, ICC-02/11-01/15-223.

² Request, ICC-02/11-01/15-223, page 19.

³ Prosecution response to Laurent Gbagbo's request for protection to enable Defence investigations (ICC-02/11-01/15-223), ICC-02/11-01/15-227.

dismissed on the bases that: (i) the Gbagbo Defence does not raise any specific or objectively identifiable security risks or impediments to the conduct of its investigations in Côte d'Ivoire;⁴ (ii) the Request is premature, insofar as the Gbagbo Defence did not first approach the Registry to seek a solution to the issues it raises;⁵ (iii) concrete and identifiable examples of non-cooperation or interference with investigations are required before the Court may issue a cooperation request to a State Party;⁶ and (iv) the Request does not provide a reasonable or appropriate basis for requesting a suspension of the trial commencement date.⁷

3. On 8 October 2015, the Legal Representative of Victims ('LRV') filed her response to the Request ('LRV Response'),⁸ arguing that it should be dismissed on the bases that: (i) the Request is speculative and unfounded, lacking 'any actual and concrete detail supporting the insecurity and the lack of means alleged in the Request';⁹ (ii) the public character of the Request is not consistent with the remedy sought in terms of the cooperation of France and Côte d'Ivoire;¹⁰ (iii) the Request fails to comply with the requirement of due diligence, as it was not filed in a timely manner;¹¹ (iv) the Defence should first have approached the Registry with any communications support it required before seising the Chamber;¹² and (v) the request to postpone the trial commencement date on the basis of the Request is not substantiated.¹³

⁴ Prosecution Response, ICC-02/11-01/15-227, paras 2-6.

⁵ Prosecution Response, ICC-02/11-01/15-227, para. 7.

⁶ Prosecution Response, ICC-02/11-01/15-227, paras 8-9.

⁷ Prosecution Response, ICC-02/11-01/15-227, para. 10.

⁸ Response to Mr Gbagbo's "*Demande à la Chambre de mesures de protection de façon à permettre le travail d'enquête des équipes de Défense*" (ICC-02/11-01/15-223), ICC-02/11-01/15-271.

⁹ LRV Response, ICC-02/11-01/15-271, paras 7-10.

¹⁰ LRV Response, ICC-02/11-01/15-271, para. 11.

¹¹ LRV Response, ICC-02/11-01/15-271, para. 12.

¹² LRV Response, ICC-02/11-01/15-271, para. 14.

¹³ LRV Response, ICC-02/11-01/15-271, para. 16.

4. On 16 October 2015, having been requested to do so by the Chamber,¹⁴ the Registry filed its observations on the Request ('Registry Observations'),¹⁵ stating, *inter alia*, that: (i) the Registry's Security and Safety Section ('SSS') has not received any information from the defence teams for Mr Gbagbo or Mr Blé Goudé while on mission that would indicate any concern, interference or suspicious activity;¹⁶ (ii) all defence teams are supported with the standard security mitigation measures provided to the Court staff, provided they comply with certain requirements;¹⁷ (iii) SSS [REDACTED] recommends that existing security and communication resources continue to be used;¹⁸ and (iv) [REDACTED] Article 8 of the "*Protocole d'accord entre la République de Côte d'Ivoire et la Cour pénale internationale concernant les activités de la Cour sur le territoire de la République de Côte d'Ivoire*" ('Protocol'), dated 15 February 2012.¹⁹

5. On 28 October 2015, the Gbagbo Defence filed further submissions in relation to the Registry Observations ('Further Submissions').²⁰

II. Preliminary matter

6. The Single Judge notes that the Defence filed a purported response to the Registry Observations on 28 October 2015,²¹ without seeking authorisation to do so. Pursuant to Regulation 24(1) and (4) of the Regulations, the Single Judge considers

¹⁴ See email communication from Legal Officer of the Chamber to the Registry on 24 September 2015 at 18:11 instructing the Registry to provide observations by 8 October 2015. The Registry subsequently requested an extension of time in which to submit its observations, until 16 October 2015 (see email communication from the Registry to the Chamber on 6 October 2015 at 16:01), which was granted by the Chamber (see email communication from Legal officer of the Chamber to the Registry on 7 October 2015 at 14:13).

¹⁵ Registry's observations on the "*Demande à la Chambre de mesures de protection de façon à permettre le travail d'enquête des équipes de Défense*" (ICC-02/11-01/15-223), ICC-02/11-01/15-297-Conf.

¹⁶ Registry Observations, ICC-02/11-01/15-297-Conf, para. 3.

¹⁷ Registry Observations, ICC-02/11-01/15-297-Conf, paras 4-6.

¹⁸ Registry Observations, ICC-02/11-01/15-297-Conf, para. 7. See also paras 9-12.

¹⁹ Registry Observations, ICC-02/11-01/15-297-Conf, para. 15.

²⁰ *Réponse de la Défense aux «Registry's observations on the "Demande à la Chambre de mesures de protection de façon à permettre le travail d'enquête des équipes de Défense" (ICC-02/11-01/15-223)» (ICC-02/11-01/15-297-Conf)*, ICC-02/11-01/15-320-Conf-Exp. A confidential redacted version was filed the same day (ICC-02/11-01/15-320-Conf-Red).

²¹ Further Submissions, ICC-02/11-01/15-320-Conf-Red.

that the Gbagbo Defence was not entitled to file its Further Submissions without requesting leave from the Chamber. Accordingly, the Further Submissions are unauthorised and have not been considered in rendering the present decision.

III. Analysis

7. The Single Judge observes that, pursuant to Rule 20(1)(b) of the Rules, the Registry shall '[p]rovide support, assistance, and information to all defence counsel appearing before the Court and, as appropriate, support for professional investigators necessary for the efficient and effective conduct of the defence'.
8. The Single Judge has taken note of the Registry Observations in relation to the systems in place to assist defence counsel at the Court with security-related issues under this provision, including, *inter alia*: (i) the SSS, and its role in [REDACTED];²² (ii) the availability of standard security mitigation measures for missions, [REDACTED];²³ (iii) the availability of personal security arrangements;²⁴ (iv) the availability of the [REDACTED];²⁵ (v) the possibility to obtain secure and reliable means of communications, including use of [REDACTED];²⁶ and (vi) the role of the Registry in addressing certain cooperation issues with States Parties.²⁷
9. In the present circumstances, the Single Judge notes that the Registry states that it has not received any information from the Gbagbo Defence while on mission 'indicating any concern, interference or suspicious activity',²⁸ or [REDACTED].²⁹ Nor is the Registry of the view that [REDACTED].³⁰ Further, the Single Judge notes the Registry observation that incidences of communication intercepts alleged

²² Registry Observations, ICC-02/11-01/15-297-Conf, para. 5.

²³ Registry Observations, ICC-02/11-01/15-297-Conf, paras 4-5.

²⁴ Registry Observations, ICC-02/11-01/15-297-Conf, para. 6.

²⁵ Registry Observations, ICC-02/11-01/15-297-Conf, para. 8.

²⁶ Registry Observations, ICC-02/11-01/15-297-Conf, paras 9-12.

²⁷ Registry Observations, ICC-02/11-01/15-297-Conf, paras 13-14.

²⁸ Registry Observations, ICC-02/11-01/15-297-Conf, para. 3.

²⁹ Registry Observations, ICC-02/11-01/15-297-Conf, para. 7.

³⁰ Registry Observations, ICC-02/11-01/15-297-Conf, para. 2.

by the Defence have not been substantiated, which would be required to trigger the Registry's obligation to raise the issue with relevant States Parties; in this case, Côte d'Ivoire and France.³¹ Finally, the Single Judge notes that the [REDACTED].³²

10. Accordingly, the Single Judge finds the Request to be premature and entirely lacking in merit. Should the Defence have specific and substantiated concerns it requires assistance in relation to, it must first approach the Registry and, if agreement cannot be reached, only then seise the Chamber. Should the Defence require support in terms of security assistance while on mission, or the ability to conduct communications in a secure manner beyond use of the standard equipment issued by the Registry, then it may directly approach the Registry with such requests, which may then be addressed, as appropriate, under the Registry's obligations pursuant to, *inter alia*, Rule 20 of the Rules. On a similar basis, in the absence of any compelling material underpinning the occurrence of interception of Defence communications, the Single Judge does not consider there to be a concrete basis for warning against interference with Defence investigations to either Côte d'Ivoire or France. It therefore follows that the Single Judge also considers the request of the Defence to suspend the trial commencement date until the Defence can investigate adequately to be wholly unwarranted.³³

11. However, the Single Judge finds that, to the extent that the Registry submits that the Protocol [REDACTED]. Accordingly, the Single Judge directs the Registry to file the Protocol into the record of the case, confidentially if necessary.

³¹ Registry Observations, ICC-02/11-01/15-297-Conf, paras13-14.

³² Registry Observations, ICC-02/11-01/15-297-Conf, para. 8.

³³ Request, ICC-02/11-01/15-223, page 19.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the relief sought in the Request;

DISREGARDS the Further Submissions;

DIRECTS the Registry to file the Protocol into the record of the case; and

DIRECTS the Registry to file a public redacted version of the Registry Observations (ICC-02/11-01/15-297-Conf) within one week of the issuance of the present decision.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser, Single Judge

Dated 13 January 2016

At The Hague, The Netherlands