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

Date: 18 March 2016

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

PUBLIC

**With Confidential Annex A and Confidential *EX PARTE* Annex B only available
to the Chamber, the Prosecution, and the Legal Representatives of the Victims**

**Prosecution request for the lifting of certain redactions in the victim applications
of nine dual status witnesses**

Source: Office of the Prosecutor

Document 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 the Victims

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**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

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution seeks the Trial Chamber's authorisation to lift certain redactions made to the applications for participation as victims in the proceedings ("victim applications") of nine dual status witnesses, with a view to disclosing lesser redacted versions to the Defence teams for Mr Gbagbo ("Gbagbo Defence team") and Mr Blé Goudé ("Blé Goudé Defence team") respectively. Specifically, the Prosecution requests the lifting of redactions to the names and organisational affiliations of (i) victims intermediaries (as distinguished from intermediaries who assist in investigations)¹ and (ii) other persons having assisted in the victim application process, in circumstances where the intermediary or other person is also a Prosecution witness.

Request for Confidentiality

2. The Prosecution requests that Annex A is received as "Confidential" as it contains information relating to Prosecution witnesses.
3. The Prosecution requests that Annex B is received as "Confidential *ex parte*", not available to the Defence, as it contains an unredacted version of a victim application only available to the Defence in redacted form.

Procedural Background

4. On 6 March 2015, the Chamber issued its "Decision on victim participation".² The decision stated, *inter alia*, that "under Rule 76 or 77 of the Rules, 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."³

¹ See ICC-02/11-01/11-737, paras. 37-39; ICC-02/11-01/15-202, paras. 16- 18. See also the Redaction Protocol (ICC-02/11-01/11-737-AnxA), category A.5.

² ICC-02/11-01/11-800 ("6 March 2015 Decision"). See also ICC-02/11-01/11-737.

³ ICC-02/11-01/11-800, para. 56 (internal footnote omitted).

5. On 8 June 2015, the Prosecution disclosed to both Defence teams 19 victim applications of dual status individuals, pursuant to the Chamber's 6 March 2015 Decision and the Prosecution's disclosure obligation under rule 77 of the Rules of Procedure and Evidence ("Rules").⁴ Twelve of these applications contained redactions applied at the request of the Legal Representative of Victims ("LRV").
6. On the same day, the LRV filed a "Request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the applications of dual status individuals".⁵ This request sought the Chamber's authorisation for the redactions applied to the 12 applications at the LRV's request.
7. On 7 and 8 July 2015, the Prosecution disclosed to the Blé Goudé and Gbagbo Defence teams respectively one further victim application of a dual status individual, pursuant to the Chamber's 6 March 2015 Decision, and rule 77 of the Rules.⁶
8. On 7 July 2015, the LRV filed a "Second request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the applications of dual status individuals".⁷ This request sought the Chamber's authorisation for the redactions applied to the further victim application.
9. On 2 September 2015, in its "Decision on the Legal Representative of Victims' requests to maintain redactions to information relating to certain intermediaries",⁸ the Chamber authorised the redactions sought in the LRV's First and Second Requests. This ruling was made "without prejudice to the lifting of these redactions at any further stage of the proceedings, either *proprio motu* or upon the

⁴ See ICC-02/11-01/15-86.

⁵ ICC-02/11-01/15-85 ("LRV's First Request").

⁶ See ICC-02/11-01/15-128.

⁷ ICC-02/11-01/15-126 ("LRV's Second Request").

⁸ ICC-02/11-01/15-202 ("2 September 2015 Decision").

request of a party or participant, if the redacted information becomes relevant to a live issue in the case.”⁹

10. On 18 March 2016, prior to the filing of the present request, the Prosecution disclosed to both Defence teams two further victim applications of dual status individuals, pursuant to the Chamber’s 6 March 2015 Decision, and rule 77 of the Rules.¹⁰

Submissions

Nine victim applications of dual witnesses previously disclosed in June and July 2015

11. In the course of a broader process of review of all victim applications in its possession, the Prosecution has identified nine victim applications of dual status witnesses (“the nine victim applications”) which contain redactions to victims intermediaries and other persons who are, themselves, also Prosecution witnesses (“the relevant redactions”). The nine victim applications were previously disclosed in the course of June and July 2015, as described above.
12. The Prosecution seeks to lift the relevant redactions on grounds that where Prosecution witnesses have acted as victims intermediaries or have otherwise assisted dual witnesses in the victim application process, the identities and organisational affiliations of such Prosecution witnesses is information which the Prosecution is required to disclose under rule 77 of the Rules.
13. There would appear to be no countervailing basis for non-disclosure of this information.
14. The relevant redactions fall into two redaction categories. Some are “LRV” redactions, applied at the request of the LRV and in accordance with the Chamber’s 2 September 2015 Decision. Others are “B.3” redactions, which are

⁹ ICC-02/11-01/15-202, para. 20.

¹⁰ The communication of disclosure will be filed with the Chamber in due course. The Prosecution also sent advance copies of these applications to both Defence teams via email on 7 and 9 March 2016.

innocent third party redactions previously applied by the Prosecution in accordance with the Redaction Protocol.¹¹ For the reasons set out below, the Prosecution now takes the view that neither category of redaction applies in the case of persons who are also Prosecution witnesses.

15. Following correspondence with the LRV, it is the Prosecution's understanding that the LRV is opposed to the lifting of both categories of redactions.

16. The nine victim applications are listed in Confidential Annex A to this request, along with details of the redactions that the Prosecution seeks authorisation to lift. In six of the victim applications, only "LRV" redactions are sought to be lifted. In one victim application, only "B.3" redactions are sought to be lifted. In two victim applications, both "LRV" and "B.3" redactions are sought to be lifted. So that the Chamber may view the current redactions, the list contains references to highlighted versions of eight of the nine victim applications filed previously by the LRV as *ex parte* annexes.¹² As one of the applications was not previously provided to the Chamber in this manner, the Prosecution provides a version of this application, with current redactions highlighted, at Confidential *ex parte* Annex B.

17. As the Chamber has already determined, none of the standard redaction categories under the Redaction Protocol – including the "B.3" category for innocent third parties – applies to victims intermediaries.¹³ Whilst the Chamber, in its 2 September 2015 Decision, previously authorised redactions to the identities of intermediaries, it appeared to do so in order to counter the risk that "the intermediaries 'may be perceived as potential witnesses or collaborators with the Court'".¹⁴ In the case of victims intermediaries who are in fact Prosecution witnesses, this basis for non-disclosure is not applicable and the fact of their assistance is material to the preparation of the Defence.

¹¹ ICC-02/11-01/11-737-AnxA.

¹² By way of filings ICC-02/11-01/15-85 and ICC-02/11-01/15-126.

¹³ ICC-02/11-01/15-202, paras. 16- 18.

¹⁴ ICC-02/11-01/15-202, para. 19.

18. Similarly, none of the standard categories apply to third parties who have assisted the dual witness in the victim application process, in some other way – in the case of these applications, by certifying documents attached to the application – if and insofar as these third parties are also Prosecution witnesses. While the Prosecution has previously applied the “B.3” redaction category to the identities of all such persons, it now takes the view that third parties who are also Prosecution witnesses do not qualify as “innocent third parties” within the meaning of the Redaction Protocol. It cannot be said that such persons have, generally speaking, “not agreed to be part of the Court process”.¹⁵ Further, the stated aim of protecting individuals from the “risk of being perceived as potential witnesses or collaborators with the Court”¹⁶ can have no application where the individual is already a Prosecution witness.

Further victim applications of dual witnesses

19. The Prosecution notes that a further victim application disclosed to the Gbagbo and Blé Goudé Defence teams on 18 March 2016 also contains the details of a victims intermediary who is a Prosecution witness. The Prosecution has applied “LRV” category redactions to these details, at the request of the LRV, and with the understanding that the LRV will file a request for the redactions to be authorised by the Chamber. However, for the reasons set out at paragraphs 12 to 14, and 17, above, the Prosecution intends to oppose redaction to the name and organisation of the intermediary, once the LRV’s request is formally made.¹⁷

20. Further, in the course of its process of reviewing all victim applications in its possession, the Prosecution has identified additional dual witnesses. The Prosecution is currently liaising with the LRV about the redactions to be applied to the victim applications of these dual witnesses, prior to disclosure to the Gbagbo and Blé Goudé Defence teams. Consistent with the position set out in this

¹⁵ ICC-02/11-01/11-737-AnxA, para. 40.

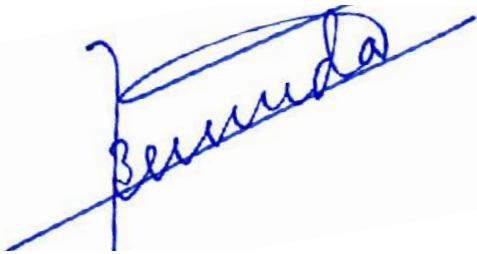
¹⁶ ICC-02/11-01/11-737-AnxA, para. 40.

¹⁷ The Prosecution does not oppose redaction to the intermediary’s contact details.

request, the Prosecution would oppose any redactions sought by the LRV to the name and organisation of any victims intermediaries who are Prosecution witnesses.

Request

21. For the reasons set out, the Prosecution seeks the Chamber's authorisation to lift the relevant redactions to the nine victim applications, so that it may disclose them to Mr Gbagbo and Mr Blé Goudé in lesser redacted forms.



Fatou Bensouda, Prosecutor

Dated this 18th day of March 2016

At The Hague, The Netherlands