

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/11-01/15**
Date: 1 February 2018

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 redacted version

**Decision on Prosecution application for non-standard redactions to material
related to another and ongoing investigation in the Côte d'Ivoire situation**

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

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 64 and 68 of the Rome Statute ("Statute") and Rule 81 of the Rules of Procedure and Evidence, issues the following decision:

1. On 1 December 2018 the Prosecutor filed an ex parte application to be authorised to apply non-standard redactions to [REDACTED] in the course of her ongoing investigation in Ivory Coast.¹ The Prosecutor supplemented her application on 11 December 2018 in relation to additional screening notes.²
2. The Chamber has carefully considered the Prosecutor's application [REDACTED]. While the Chamber recognises the Prosecutor's need to protect its ongoing investigations, it is not persuaded by the Prosecutor's general and unsubstantiated justification for the proposed redactions. In particular, the Chamber notes the lack of information regarding the present situation of the persons that were interviewed by the Prosecutor.
3. Moreover, the Prosecutor has not sufficiently explained why disclosing the identity of the persons to the Defence in these proceedings would jeopardise its other ongoing investigations. The Chamber recalls that both accused remain in detention and that their respective defence teams are bound by high standards of professional conduct. To the Chamber's knowledge, there have not been any substantiated incidences of unauthorised disclosure of confidential information by the Defence.
4. The Chamber is therefore of the view that the Prosecutor has not satisfied its burden to demonstrate that disclosure of the identity of the interviewed

¹ ICC-02/11-01/15-1083-Conf-Exp

² ICC-02/11-01/15-1085-Conf-Exp

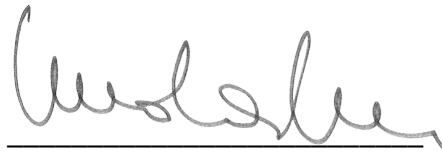
persons to the Defence would occasion an objectively justifiable risk of prejudice to its ongoing investigation. Notwithstanding this, and given the *ex parte* nature of this application, ordering the Prosecutor to provide additional information and further consideration of each application is not efficient and may produce unfairness because the Defence would not be able to comment. Moreover, it would imply further delaying the disclosure of information which the Prosecutor has deemed material to the preparation of its Defence. The Chamber notes, in this regard, that the Prosecutor had in its possession for some time the undisclosed screening notes containing information that is potentially material for the defence of the two accused in this case. In order to avoid additional delays, the Chamber authorises the Prosecutor to disclose the screening notes with the proposed redactions.

5. In the event of an *inter partes* application to lift the redactions so as to reveal the identity of any person or persons questioned by the Prosecution, it is incumbent upon the Prosecutor to properly substantiate the need for the redaction. In the alternative, where lifting such redactions may prejudice the Prosecutor's investigations, it is open to the parties to stipulate agreed facts that satisfy the interest of the both parties, failing which either or both parties shall bring the matter to the attention of the Chamber.

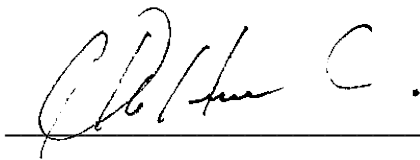
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

AUTHORISES the Prosecutor to apply the proposed redactions under the conditions outlined in this decision.

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

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

Judge Cuno Tarfusser, Presiding Judge

A handwritten signature in dark ink, appearing to read 'Olga Herrera Carbuca', written over a horizontal line.

Judge Olga Herrera Carbuca

A handwritten signature in dark ink, appearing to read 'G. Henderson', written over a horizontal line.

Judge Geoffrey Henderson

Dated 1 February 2018

At The Hague, The Netherlands