

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date of the original: 21 May 2015

Date of this decision: 21 July 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**

**Public redacted version of 'Decision on Prosecution requests on redactions'**

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**

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**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, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 64(2) (3), (6)(c) and (e), 67(2) and 68(1) of the Rome Statute, Rules 76-77, 81(4), 84 and 87 of the Rules of Procedure and Evidence ('Rules') and Regulation 42 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Prosecution requests on redactions'.

### **I. Procedural History**

1. On 17 November 2014, the Chamber in *The Prosecutor v. Laurent Gbagbo* ('Gbagbo case') issued the 'Order setting the commencement date for the trial and the time limit for disclosure', directing, *inter alia*, the Office of the Prosecutor ('Prosecution') to disclose to the defence team for Mr Gbagbo ('Gbagbo Defence') 'all Rule 76 and Rule 77 material on a rolling basis, [...] all Article 67(2) material as soon as practicable, and in any event to provide full disclosure of all material to the Gbagbo Defence no later than 6 February 2015' ('Order of 17 November 2014').<sup>1</sup>
2. On 15 December 2014, the Single Judge issued the 'Decision on the Protocol establishing a redaction regime' ('Decision on the Redaction Protocol'), deciding that the parties in the *Gbagbo* case shall apply the protocol set out in Annex A thereto ('Redaction Protocol').<sup>2</sup>
3. On 13 January 2015, the Chamber issued a decision whereby it suspended the deadline of 6 February 2015 for material that may become available to the Prosecution in ongoing investigations in the case of the *Prosecutor v. Charles Blé*

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<sup>1</sup> ICC-02/11-01/11-723, para. 10.

<sup>2</sup> ICC-02/11-01/11-737 and Annex A.

*Goudé* ('*Blé Goudé* case'), pending a decision on the request for joinder of the *Gbagbo* and *Blé Goudé* cases.<sup>3</sup>

4. On 6 February 2015, the Prosecution filed in the *Gbagbo* case two requests concerning redactions: (i) a request seeking an extension of time limit for the disclosure to the Gbagbo Defence of a number of documents including some related to Witness P-0114;<sup>4</sup> and (ii) a request for maintenance of redactions to certain identified material, including documents related to Witness P-0402 and P-0316.<sup>5</sup>
5. With regard to the first request, on 9 March 2015, the Chamber recalled that the disclosure deadline of 6 February 2015 of items obtained in ongoing investigations in the *Blé Goudé* case had been suspended pending a decision on the request for joinder of the *Gbagbo* and *Blé Goudé* cases, and considered such request as unnecessary and moot.<sup>6</sup>
6. In the meantime, on 27 February 2015, the Prosecution filed a request for non-standard redactions to documents related to Witness P-0114 ('First Prosecution Request').<sup>7</sup> The Prosecution requests authorisation to apply redactions to: (i) the screening notes taken with Witness P-0114 [REDACTED]; and (ii) the statement of Witness P-0114 [REDACTED]. On the same day, the

<sup>3</sup> Decision on the 'Prosecution's Request for Partial Suspension of the "Order setting the commencement date for the trial and the time limit for disclosure"', 13 January 2015, ICC-02/11-01/11-746.

<sup>4</sup> Prosecution's request pursuant to regulation 35 for an extension of time to disclose certain material, ICC-02/11-01/11-760-Conf-Exp. A confidential redacted version was filed on that same date (ICC-02/11-01/11-760-Conf-Red) and a public redacted version was filed on 9 February 2015 (ICC-02/11-01/11-760-Red2).

<sup>5</sup> Prosecution's request pursuant to regulation 35 for variation of time limit to redisclose certain documents with fewer redactions and Prosecution's request for authorisation to maintain redactions, ICC-02/11-01/11-761 with confidential *ex parte* Prosecution only, Annexes A-O.

<sup>6</sup> Decision on Prosecution's request for an extension of time to disclose certain Material, 9 March 2015, ICC-02/11-01/11-804-Conf, para. 33. A public redacted version was filed on the same day as ICC-02/11-01/11-804-Red.

<sup>7</sup> Prosecution's request for authorisation to redact two documents related to P-0114, 27 February 2015, ICC-02/11-01/11-787-Conf-Exp, with confidential *ex parte* Annex A. A confidential redacted version of the request was filed on the same day (ICC-02/11-01/11-787-Conf-Red); a confidential redacted version of the annex was notified to the Gbagbo Defence on 26 March 2015 and to the Blé Goudé Defence on 2 April 2015.

Prosecution disclosed to the Gbagbo Defence a redacted version of the said screening notes and statement of Witness P-0114.<sup>8</sup>

7. With regard to the other Prosecution request filed on 6 February 2015, on 25 February 2015, the Single Judge authorised, *inter alia*, the maintenance of redactions in relation to some material while it rejected the Prosecution's request with regard to other material, including documents related to Witnesses P-0316 and P-0402, 'unless the Prosecution provides the Chamber with justification for the redactions sought in [the relevant] Annexes [...] within seven days of the present decision being issued'.<sup>9</sup> Subsequently, on 5 March 2015, the Prosecution filed a further request for authorisation to maintain redactions to documents related to P-0316 and P-0402 ('Second Prosecution Request', and together with First Prosecution Request, 'Prosecution Requests on Redactions').<sup>10</sup> The Prosecution seeks authorisation to apply redactions in relation to Witness P-0316 to: (i) the screening notes [REDACTED]; and (ii) the witness' statement [REDACTED].<sup>11</sup> In relation to Witness P-0402, the Prosecution seeks authorisation to apply redactions to: (i) the statement of P-0402 [REDACTED]; and (ii) two annexes to this statement.<sup>12</sup>
8. On 11 March 2015, the Chamber decided to join the *Gbagbo* case and *Blé Goudé* case ('Decision on Joinder').<sup>13</sup>

<sup>8</sup> Prosecution's Communication of Evidence Disclosed to the Defence on 27 February 2015, 2 March 2015, ICC-02/11-01/11-793, with confidential Annexes A and B.

<sup>9</sup> Decision on the Prosecution request pursuant to Regulation 35 of the Regulations and on the maintenance of redactions, 25 February 2015, ICC-02/11-01/11-782-Conf-Exp, paras 24 and 27. A public redacted version was filed on the same day (ICC-02/11-01/11-782-Red).

<sup>10</sup> Prosecution's further request for authorisation to maintain redactions to documents related to P-0316 and P-0402, ICC-02/11-01/11-797-Conf-Exp, with confidential *ex parte* Annexes A and B. A redacted version was filed on the same day (ICC-02/11-01/11-797-Conf-Red).

<sup>11</sup> Second Prosecution Request, ICC-02/11-01/11-797-Conf-Exp, para. 7.

<sup>12</sup> Second Prosecution Request, ICC-02/11-01/11-797-Conf-Exp, para. 21.

<sup>13</sup> Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters, with public Annex A, 11 March 2015, ICC-02/11-01/15-1. *See also* ICC-02/11-01/11-810 and ICC-02/11-02/11-222.

9. On 17 March 2015, the Single Judge issued an order setting deadlines to file submissions on a number of outstanding matters in the *Gbagbo* case and the *Blé Goudé* case, ordering, *inter alia*, the defence team for Mr Blé Goudé ('Blé Goudé Defence') to file any observations on the Prosecution Requests on Redactions by 2 April 2015.<sup>14</sup>
10. On 23 and 27 March 2015, the Gbagbo Defence filed its responses to the First and the Second Prosecution's requests on redaction, respectively ('Gbagbo Observations').<sup>15</sup>
11. On 1 April 2015, the Blé Goudé Defence filed its consolidated response to the Prosecution Requests on Redactions ('Blé Goudé Observations').<sup>16</sup> On 2 April 2015, it filed an addendum ('Blé Goudé Addendum').<sup>17</sup>
12. Also on 2 April, the parties were informed that, in light of, *inter alia*, the notification of two annexes to the Second Prosecution Request to the Blé Goudé Defence that day, both defence teams had until 9 April 2015 to make any further submissions in relation to the Second Prosecution Request.<sup>18</sup> The Single Judge further clarified that, notwithstanding the alternative request for an extension of time made in the *Blé Goudé Addendum*, the deadline for any further submissions in relation to the Second Prosecution Request remained 9 April 2015.<sup>19</sup>

<sup>14</sup> Order setting deadlines for submissions on certain pending matters, 17 March 2015, ICC-02/11-01/15-7, paras 8, 10 and page 8.

<sup>15</sup> *Réponse de la Défense à la « Prosecution's request for authorisation to redact two documents related to P-0114 »* (ICC-02/11-01/11-787-Conf-Red), 23 March 2015, ICC-02/11-01/15-10-Conf; *Réponse de la Défense à la « Prosecution's further request for authorisation to maintain redactions to documents related to P-0316 and P-0402 »* (ICC-02/11-01/11-797-Conf-Red), 27 March 2015, ICC-02/11-01/15-15-Conf. A confidential redacted version was filed on the same day as ICC-02/11-01/15-15-Conf-Red.

<sup>16</sup> Defence Observations on the Prosecution's requests to apply non-standard redactions to documents related to P-0114, and to maintain redactions to documents related to P-0316 and P-0402, 1 April 2015, ICC-02/11-01/15-17-Conf.

<sup>17</sup> Addendum to Defence Observations on the Prosecution's requests to apply non-standard redactions to documents related to P-0114, and to maintain redactions to documents related to P-0316 and P-0402, 2 April 2015, ICC-02/11-01/15-22-Conf.

<sup>18</sup> Email communication from Legal Officer of the Chamber to parties and participants, sent on 2 April 2015, at 16.20.

<sup>19</sup> Email communication from Legal Officer of the Chamber to parties and participants, sent on 8 April 2015, at 16.17.

13. On 9 April 2015, the Blé Goudé Defence filed a further addendum ('Blé Goudé Further Addendum').<sup>20</sup>

14. During the status conference on 21 April 2015, the parties made further submissions on, *inter alia*, the disclosure of material, including in relation to Witness P-0114.<sup>21</sup>

## II. Applicable law

15. The Single Judge set out the relevant applicable law on non-standard redactions in the 15 December 2014 Decision and in the Redaction Protocol.<sup>22</sup>

16. For the purpose of the present decision, it is recalled, in particular, that 'disclosable material should be served in full and any redactions need to be justified and authorised individually under the provisions of the Statute'.<sup>23</sup> Under Rule 81(4) of the Rules, where the disclosure of information may compromise the safety of victims, witnesses, their families, or any 'other person at risk on account of activities of the Court', the Prosecution is entitled to request redactions.<sup>24</sup>

17. Each redaction sought on this basis shall be assessed on a case-by-case basis by the Chamber, with due regard to the competing interests at stake. To this end, the following criteria shall be applied: i) the existence of an 'objectively justifiable risk'<sup>25</sup> to the safety of the person concerned;<sup>26</sup> ii) the risk must arise from disclosing the particular information to the Defence;<sup>27</sup> iii) the infeasibility or

<sup>20</sup> Submissions pursuant to the order regarding any further submissions - ICC-02/11-01/11-797-Conf-Red, ICC-02/11-01/15-25-Conf with Annex A.

<sup>21</sup> Transcript of hearing on 21 April 2015, ICC-02/11-01/15-T-1-CONF-ENG ET, page 25, line 3 to page 32, line 6.

<sup>22</sup> Decision on the Redaction Protocol, ICC-02/11-01/11-737 paras 8-11; Redaction Protocol, ICC-02/11-01/11-737-AnxA, paras 48-50.

<sup>23</sup> Decision on the Redaction Protocol, ICC-02/11-01/11-737, para. 9 and footnote 12.

<sup>24</sup> *The Prosecutor v. Germain Katanga*, Appeals Chamber, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements", 13 May 2008, ICC-01/04-01/07-475, OA, ('Katanga OA Judgment'), para. 56.

<sup>25</sup> *Katanga* OA Judgment, ICC-01/04-01/07-475, para. 71.

<sup>26</sup> *Katanga* OA Judgment, ICC-01/04-01/07-475, para. 97.

<sup>27</sup> *Katanga* OA Judgment, ICC-01/04-01/07-475, para. 71(b).

insufficiency of less restrictive protective measures;<sup>28</sup> iv) an assessment as to whether the redactions sought are ‘prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial’;<sup>29</sup> and v) the obligation to periodically review the decision authorising the redactions should circumstances change.<sup>30</sup>

### III. Analysis and Submissions

18. The Chamber has the duty to ensure that the trial is conducted with full respect for the rights of Mr Gbagbo and Mr Blé Goudé and with due regard to the protection of victims and witnesses.<sup>31</sup> The Single Judge has carefully assessed the relevance, for the Gbagbo and Blé Goudé Defence teams (together, ‘Defence’), of the information covered by the redactions sought, including whether or not the Prosecution intends to rely on the material in question at trial.

#### A. Preliminary Issues

19. The Single Judge notes that the Defence submits that the Prosecution Requests on Redactions ought to be rejected as the Prosecution did not comply with the procedure set out in the Decision on the Redactions and the Redactions Protocol. In particular, the Defence argues that they did not receive, in a timely manner, the Prosecution’s redactions charts, which are required to be furnished to the Defence by virtue of paragraphs 49-50 of the Redaction Protocol.<sup>32</sup> While the Single Judge

<sup>28</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled “Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence”, 13 October 2006, ICC-01/04-01/06-568, para. 37; Judgment on the appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81”, 14 December 2006, ICC-01/04-01/06-773, OA5 (‘Lubanga OA5 Judgment’), para. 33.

<sup>29</sup> *Lubanga OA5 Judgment*, ICC-01/04-01/06-773, para. 34.

<sup>30</sup> *Katanga OA Judgment*, ICC-01/04-01/07-475, para. 73(c); *The Prosecutor v. Germain Katanga*, Appeals Chamber, Judgment on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”, 13 May 2008, ICC-01/04-01/07-476, OA2, para. 64.

<sup>31</sup> See Articles 64(2), (3) and (6)(c), and (e), as well as Articles 67 and 68(1) of the Statute.

<sup>32</sup> See, for example, Gbagbo Observations, ICC-02/11-01/15-15-Conf, paras 13-20; ICC-02/11-01/15-10-Conf, paras 27-31; Blé Goudé Observations, ICC-02/11-01/15-17-Conf, paras 11 and 18-20; Blé Goudé Addendum, ICC-02/11-01/15-22-Conf, para. 7. The Chamber acknowledges that the Blé Goudé Defence, in its addendum, noted that the charts related to Witnesses P-0114 and P-0402 were notified on 1 April 2015 and withdrew its argument in relation to these witnesses in relation to the Prosecution not following the Redaction Protocol. At



notes with dissatisfaction that the Prosecution filed redacted versions of the said charts almost a month after the submissions of its Requests, the Single Judge does not consider that the Defence is entitled as a matter of course to receive redactions charts, which, as noted by the Blé Goudé Defence, may be of limited additional assistance to their understanding of the main application.<sup>33</sup> Rather, the relevant question is whether the Defence had sufficient information, as a whole, to meaningfully respond to the Prosecution Requests for Redactions.

20. With regard to the argument that the Defence had insufficient information available to it to address the issues raised in relation to the three witnesses,<sup>34</sup> the Single Judge is satisfied that the Prosecution provided, in the Prosecution Requests on Redactions, all information which could be made available to the Defence without defeating the purpose of the redactions sought. The Single Judge considers that the redactions applied to the confidential redacted version of the Requests were appropriate and necessary, and notes that the Defence ultimately had access to the relevant redacted underlying material. Consequently, the Single Judge considers that the Defence had adequate information to be in a position to respond meaningfully to the Prosecution Requests on Redactions. Nonetheless, the Single Judge acknowledges that certain information, relating especially to the security situation of the individual witnesses concerned or of an identifying nature, is necessarily *ex parte*. The Single Judge will therefore not address this argument further and will now turn to the submissions put forward by the Defence on the merit of the Prosecution Requests on Redactions.

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the time of the filing of the addendum, the Blé Goudé Defence had not yet been notified of the annex related to Witness P-0316 (Blé Goudé Addendum, ICC-02/11-01/15-22-Conf, paras 6-7 and 15 a). The Blé Goudé Defence states that it obtained access to the annex relating to Witness P-0316 only on 7 April 2015 (Blé Goudé Further Addendum, ICC-02/11-01/15-25-Conf, para. 3).

<sup>33</sup> See Blé Goudé Further Addendum, ICC-02/11-01/15-25-Conf.

<sup>34</sup> See, for example, Gbagbo Observations, ICC-02/11-01/15-10-Conf, paras 33-37; ICC-02/11-01/15-15-Conf, paras 21-26; Blé Goudé Observations, ICC-02/11-01/15-17-Conf, paras 30, 42-43, Blé Goudé Addendum, para. 11.

## B. Witness P-0114

21. The Prosecution indicates that Witness P-0114 is [REDACTED].<sup>35</sup> Although the witness is [REDACTED], the Prosecution is seeking to redact precise information [REDACTED]. It lists a number of incidents showing that the witness was facing security concerns [REDACTED].<sup>36</sup> [REDACTED].<sup>37</sup>
22. The Prosecution submits that disclosing precise information on [REDACTED] will pose an objective and tangible risk [REDACTED]. On the other hand the limited redaction of this information is not prejudicial to or inconsistent with the rights of the accused as the fact that the witness [REDACTED] is not redacted from the statement. Finally, it is submitted that the prejudice to the Defence is limited as the core of the testimony is not in relation to events that [REDACTED].<sup>38</sup>
23. The Gbagbo Defence submits that the Prosecution First Request should be rejected. With regard to the screening notes [REDACTED], it claims that the Prosecution breached its disclosure obligations as it disclosed the material to the Defence only three years after the notes were taken. It avers that the disclosure, which occurred after the 6 February 2015 deadline, and the request to apply redactions, are late and should therefore be rejected.<sup>39</sup> The Gbagbo Defence further submits that the Prosecution failed to demonstrate the existence of a concrete risk to the witness or to a third person concerned, as well as any link with the present procedure,<sup>40</sup> and contends that non-disclosure would unduly prejudice the Accused, as they would hamper Defence investigations and its ability to assess the material.<sup>41</sup>

<sup>35</sup> Prosecution First Request, ICC-02/11-01/11-787-Conf-Red, para. 8.

<sup>36</sup> Prosecution First Request, ICC-02/11-01/11-787-Conf-Red, paras 7-17.

<sup>37</sup> Prosecution First Request, ICC-02/11-01/11-787-Conf-Red, para. 16.

<sup>38</sup> Prosecution First Request, ICC-02/11-01/11-787-Conf-Red, paras 18-19.

<sup>39</sup> Gbagbo Observations, ICC-02/11-01/15-10-Conf, paras 17-23.

<sup>40</sup> Gbagbo Observations, ICC-02/11-01/15-10-Conf, paras 38-51 and 60.

<sup>41</sup> Gbagbo Observations, ICC-02/11-01/15-10-Conf, paras 52-58 and 61.

24. The Blé Goudé Defence submits that the Chamber should reject the Prosecution's request for the following reasons: (i) the Prosecution did not meet its burden in establishing the need for redactions due to the objectively justifiable risk to the safety of the witnesses or to the third parties concerned. It submits that [REDACTED], they exist independently of any disclosure of the information to the Defence; (ii) the Defence retains obligations to not disclose confidential material in any event;<sup>42</sup> and (iii) the proposed redactions 'will greatly prejudice the Defence in its preparations because it will find it is unable to prepare for at least a portion of the witness' testimony'.<sup>43</sup>

25. The Single Judge will first address the Gbagbo Defence's argument that by disclosing the screening notes three years after they were taken with the witness, the Prosecution did not comply with its obligations pursuant to Article 54(1)(b) of the Statute and Rule 77 of the Rules, nor with Chamber's orders setting the 6 February 2015 deadline for disclosure of all relevant material in its possession.<sup>44</sup> The Single Judge notes that the screening notes of Witness P-0114 were disclosed by the Prosecution, together with the statements [REDACTED], on 27 February 2015. While the Prosecution did not provide any reasons for the timing of disclosure of these notes in the First Prosecution Request, this matter was discussed during the status conference on 21 April 2015.<sup>45</sup> The Single Judge acknowledges the circumstances detailed by the Prosecution in relation to disclosure of the material related to Witness P-0114, particularly on the investigation process. Therefore, while the Single Judge reminds the Prosecution of the importance of exercising diligence in the review of material in order to provide timely disclosure of material to the Defence, it is not of the view that it would be appropriate to reject the First Prosecution Request on this basis.

<sup>42</sup> Blé Goudé Observations, ICC-02/11-01/15-17-Conf, paras 11 and 32-36.

<sup>43</sup> Blé Goudé Observations, ICC-02/11-01/15-17-Conf, paras 11 and 46-47.

<sup>44</sup> Order of 17 November 2014, ICC-02/11-01/11-723, para. 10. *See also*, Decision on the 'Prosecution's Request for Partial Suspension of the "Order setting the commencement date for the trial and the time limit for disclosure"', 13 January 2015, ICC-02/11-01/11-746, para. 16.

<sup>45</sup> ICC-02/11-01/15-T-1-CONF-ENG ET, page 25, line 3 to page 32, line 6.

26. With regards to the merits of the First Prosecution Request, the Single Judge notes that according to the Prosecution, Witness P-0114 [REDACTED]. From the First Prosecution Request, it appears that Witness P-0114 is known [REDACTED]. The Single Judge notes that the Prosecution submits that the witness was facing considerable security risks [REDACTED].<sup>46</sup> [REDACTED]. The Single Judge notes additionally that [REDACTED], and that the witness could at some point [REDACTED].
27. The Single Judge notes further that Witness P-0114's statement and screening notes were disclosed as incriminatory and Rule 77 material, respectively. Although initially [REDACTED].<sup>47</sup>
28. The Single Judge is of the view that applying the redactions sought is the most appropriate measure to ensure Witness P-0114's safety, as well as [REDACTED]. The Single Judge has reviewed the screening notes and the detailed statement given by the witness. It notes that, as pointed out by the Prosecution, the fact that the witness [REDACTED] is not redacted from the statement, and that the core of the testimony is not in relation to events that [REDACTED]. Further, considering that the redactions proposed are of very limited nature and they do not render the material unintelligible or unusable, the Single Judge is satisfied that no undue prejudice will result from the maintenance of these redactions.

### **C. Witness P-0316**

29. The Prosecution notes that Witness P-0316 belonged [REDACTED].<sup>48</sup> The Prosecution submits further that Witness P-0316 was subjected [REDACTED]

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<sup>46</sup> Prosecution First Request, ICC-02/11-01/11-787-Conf-Red, paras 7-17.

<sup>47</sup> Prosecution's submission on the provisional agenda for the 21 April status conference, 14 April 2015, ICC-02/11-01/15-35-Conf-AnxA.

<sup>48</sup> Second Prosecution Request, ICC-02/11-01/11-797-Conf-Red, paras 10-12.

[REDACTED], and that Witness P-0316 retains considerable fears [REDACTED]. The Prosecution notes that [REDACTED].<sup>49</sup>

30. The Prosecution submits that no prejudice would result to the Defence from the application of non-standard redactions to information identifying [REDACTED] Witness P-0316 [REDACTED] in the witness's screening notes and witness statement on the basis that: (i) the Defence already has access to the identity of Witness P-0316 and other identifying information; (ii) the redaction of [REDACTED] does not impair the Defence's ability to understand his evidence or conduct investigations; and (iii) [REDACTED] is immaterial to the factors in relation to which he will be testifying.<sup>50</sup>

31. The Gbagbo Defence argues that the Second Prosecution Request should be rejected in relation to Witness P-0316 on the basis, *inter alia*, that: (i) the Prosecution has failed to demonstrate a concrete and current risk to Witness P-0316 or any link between [REDACTED] and the current proceedings;<sup>51</sup> (ii) the proposed redactions to P-0316's statement and screening notes render his testimony unhelpful to the Defence as allegations therein are unable to be verified;<sup>52</sup> and (iii) the alleged risks to Witness P-0316 do not emanate from Mr Gbagbo.<sup>53</sup> The Gbagbo Defence concludes that, due to the lack of information available to it, it is unable to accurately assess the prejudice the requested redactions would have on its investigations.<sup>54</sup>

32. The Blé Goudé Defence also argued that the Second Prosecution Request in relation to Witness P-0316 should be rejected on the basis that: (i) the Prosecution does not distinguish between the risks associated with disclosure of the relevant

<sup>49</sup> Second Prosecution Request, ICC-02/11-01/11-797-Conf-Exp, paras 13-14 and 17.

<sup>50</sup> Second Prosecution Request, ICC-02/11-01/11-797-Conf-Exp, paras 19-20.

<sup>51</sup> Gbagbo Observations, ICC-02/11-01/15-15-Conf, paras 33-39.

<sup>52</sup> Gbagbo Observations, ICC-02/11-01/15-15-Conf, paras 31-32.

<sup>53</sup> Gbagbo Observations, ICC-02/11-01/15-15-Conf, paras 38-39.

<sup>54</sup> Gbagbo Observations, ICC-02/11-01/15-15-Conf, paras 53-59.

documents to Mr Blé Goudé and the public at large;<sup>55</sup> (ii) the alleged [REDACTED] do not follow from the disclosure [REDACTED];<sup>56</sup> (iii) parties are in any event duty-bound not to reveal confidential information;<sup>57</sup> (iv) it is prejudicial to allege that the risk to Witness P-0316 is objectively justifiable [REDACTED];<sup>58</sup> and (v) critical information in relation to Witness P-0316 is unable to be verified by the Blé Goudé Defence due to the Prosecution's proposed redactions.<sup>59</sup>

33. The Single Judge is persuaded that an objectively justifiable risk exists in respect of Witness P-0316 [REDACTED]. In so finding, the Single Judge has considered the cumulative effect of Witness P-0316's role [REDACTED], whose identity has been disclosed to the Defence [REDACTED].

34. The Single Judge notes further that the protective measures [REDACTED], referred to by the Prosecution, [REDACTED], [REDACTED].<sup>60</sup> [REDACTED].<sup>61</sup> While the Single Judge [REDACTED], he does not consider that this should now justify the witness [REDACTED] being exposed to further risk by divulging the information sought to be redacted.

35. Indeed, in such circumstances, and while noting that Witness P-0316 [REDACTED],<sup>62</sup> the Single Judge considers that the redactions to the witness's statement and screening notes, as proposed, are of very limited nature, given that are only sought in respect of [REDACTED],<sup>63</sup> and will therefore not cause any undue prejudice to the accused. The Single Judge therefore authorises the requested redactions.

<sup>55</sup> Blé Goudé Observations, ICC-02/11-01/15-17-Conf, para. 24.

<sup>56</sup> Blé Goudé Observations, ICC-02/11-01/15-17-Conf, para. 25.

<sup>57</sup> Blé Goudé Observations, ICC-02/11-01/15-17-Conf, para. 26.

<sup>58</sup> Blé Goudé Addendum, ICC-02/11-01/15-22-Conf, para. 12.

<sup>59</sup> Blé Goudé Addendum, ICC-02/11-01/15-22-Conf, paras 13-14.

<sup>60</sup> [REDACTED].

<sup>61</sup> Second Prosecution Request, ICC-02/11-01/11-797-Conf-Exp, paras 16-17.

<sup>62</sup> Prosecution's submission on the provisional agenda for the 21 April status conference, 14 April 2015, ICC-02/11-01/15-35-Conf-AnxA.

<sup>63</sup> [REDACTED].

#### D. Witness P-0402

36. The Prosecution notes that Witness P-0402 will provide evidence [REDACTED].<sup>64</sup> The Prosecution argues that there are 'multiple objective factors justifying concerns for the safety of the witness [REDACTED]', based on: (i) [REDACTED] [REDACTED];<sup>65</sup> (ii) [REDACTED];<sup>66</sup> and (iii) [REDACTED].<sup>67</sup> [REDACTED].<sup>68</sup>
37. The Prosecution submits that no prejudice would result to the Defence from the application of non-standard redactions to information identifying [REDACTED], on the basis that: (i) the Defence already has access to the identity of Witness P-0402; (ii) the redaction of [REDACTED] does not impair the Defence's ability to understand his evidence or conduct investigations; and (iii) [REDACTED] is immaterial to the factors in relation to which he will be testifying.<sup>69</sup>
38. The Gbagbo Defence argues that the Second Prosecution Request in relation to P-0402 should be rejected on the basis, *inter alia*, that the Prosecution has failed to demonstrate a concrete rather than theoretical risk to Witness P-0402, and that any alleged risks emanate from Mr Gbagbo and not the public at large.<sup>70</sup> In particular, the Defence submits that: (i) it is impermissibly speculative to assert that Witness P-0402 will not cooperate with the Court unless the requested redactions are granted;<sup>71</sup> (ii) the Prosecution failed to provide any details of the witness's subjective fears;<sup>72</sup> and (iii) the present political environment in Côte d'Ivoire means that Prosecution witnesses are unlikely to be targeted.<sup>73</sup> The Gbagbo Defence concludes that in the absence of sufficient justification, the

<sup>64</sup> Second Prosecution Request, ICC-02/11-01/11-797-Conf-Red, para. 25.

<sup>65</sup> Second Prosecution Request, ICC-02/11-01/11-797-Conf-Exp, para. 26.

<sup>66</sup> Second Prosecution Request, ICC-02/11-01/11-797-Conf-Red, para. 27.

<sup>67</sup> Second Prosecution Request, ICC-02/11-01/11-797-Conf-Exp, para. 28.

<sup>68</sup> Second Prosecution Request, ICC-02/11-01/11-797-Conf-Exp, para. 29.

<sup>69</sup> Second Prosecution Request, ICC-02/11-01/11-797-Conf-Exp, paras 31-32.

<sup>70</sup> Gbagbo Observations, ICC-02/11-01/15-15-Conf, paras 43-52.

<sup>71</sup> Gbagbo Observations, ICC-02/11-01/15-15-Conf, para. 45.

<sup>72</sup> Gbagbo Observations, ICC-02/11-01/15-15-Conf, paras 48-50.

<sup>73</sup> Gbagbo Observations, ICC-02/11-01/15-15-Conf, para. 51.

proposed redactions may deprive the Gbagbo Defence of information essential to, for example, assessing the credibility of witnesses.<sup>74</sup>

39. The Blé Goudé Defence also argued that the Second Prosecution Request in relation to P-0402 should be rejected on the basis that: (i) the Prosecution does not distinguish between the risks associated with disclosure of the relevant documents to Mr Blé Goudé and the public at large;<sup>75</sup> (ii) the proposed redactions appear to encompass far more than [REDACTED];<sup>76</sup> (iii) the proposed redactions will deny the Blé Goudé Defence access to information of the 'utmost importance' to the Defence, [REDACTED];<sup>77</sup> and (iv) the proposed redactions will severely prejudice the Blé Goudé Defence in assessing the veracity of certain statements.<sup>78</sup>

40. The Single Judge is persuaded that an objectively justifiable risk exists in respect of Witness P-0402. In so finding, the Single Judge has considered that the security concerns articulated by the Prosecution in relation to Witness P-0402 are based on, *inter alia*, (i) vulnerability to possible harm due to the fact that [REDACTED]; and (ii) [REDACTED].<sup>79</sup> While the Single Judge notes with concern that no reference was made in the Second Prosecution Request to [REDACTED], the Single Judge does not consider that this should now justify the witness [REDACTED] being exposed to further risk by disclosing the limited information sought to be redacted.

41. The Single Judge considers this to be additionally justified in the context of previous findings of the Chamber on the broader risks associated with

<sup>74</sup> Gbagbo Observations, ICC-02/11-01/15-15-Conf, paras 53-56 and 60-63.

<sup>75</sup> Blé Goudé Observations, ICC-02/11-01/15-17-Conf, para. 31.

<sup>76</sup> Blé Goudé Observations, ICC-02/11-01/15-17-Conf, para. 43.

<sup>77</sup> Blé Goudé Observations, ICC-02/11-01/15-17-Conf, para. 44.

<sup>78</sup> Blé Goudé Observations, ICC-02/11-01/15-17-Conf, para. 45.

<sup>79</sup> *See, for example*, Second Prosecution Request, ICC-02/11-01/11-797-Conf-Exp, paras 26-28.



Mr Gbagbo's network of supporters in Côte d'Ivoire,<sup>80</sup> which he considers may have a general bearing upon risks to such witnesses.

42. In such circumstances, the Single Judge notes that, [REDACTED],<sup>81</sup> the identity of this witness has been disclosed to the Defence. The Single Judge considers further that the redactions proposed are of very limited nature, given that they are only sought in respect of [REDACTED].<sup>82</sup> The Single Judge is therefore satisfied that no undue prejudice will result from the authorisation of the redactions requested in relation to the statement and relevant annexes of Witness P-0402.

**FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY**

**GRANTS** the First Prosecution Request;

**GRANTS** the Second Prosecution Request;

**ORDERS**, seven days after the issuing of the present decision, the filing of public redacted versions of the Prosecution Requests for Redactions; and

**ORDERS**, fourteen days after the issuing of the present decision, the filing of public redacted versions of the Gbagbo Observations, the Blé Goudé Observations, the Blé Goudé Addendum and the Blé Goudé Further Addendum.

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<sup>80</sup> *See, for example*, Seventh decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute, 11 November 2014, ICC-02/11-01/11-718-Red, para. 59.

<sup>81</sup> Prosecution's submission on the provisional agenda for the 21 April status conference, 14 April 2015, ICC-02/11-01/15-35-Conf-AnxA.

<sup>82</sup> [REDACTED].

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

A handwritten signature in black ink, reading "G Henderson", written over a horizontal line. The signature is stylized and includes a long horizontal stroke extending to the right.

**Judge Geoffrey Henderson, Single Judge**

Dated 21 July 2015

At The Hague, The Netherlands