

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **23 June 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

**Decision on the Gbagbo Defence Request for leave to appeal the Chamber's
Decision granting protective measures to P-0321 (ICC-02/11-01/15-561)**

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**

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**

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 article 82(1)(d) of the Rome Statute of the International Criminal Court ('the Statute'); rule 155 of the Rules of Procedure and Evidence ('the Rules'), and regulation 65 of the Regulations of the Court ('the Regulations'), hereby issues the following decision.

1. On 24 May 2016, by way of oral ruling, the Chamber authorised the testimony of P-0321 to be given via video-link and with use of in-court protective measures, namely face and voice distortion, pseudonym and use of private sessions and redaction of transcripts as necessary ('Oral Decision': see ICC-02/11-01/15-T-43-Conf).
2. On 30 May 2016, the Defence for Mr Gbagbo filed an application for leave to appeal the Oral Decision (ICC-02/11-01/15-561-Conf) ('Application'). In sum, the Defence identifies: (a) an error of law due to the *ex parte* nature of the Victims and Witnesses Unit ('VWU') assessments; (b) an error of fact given the Chamber's reliance on the inadequate VWU assessments; and (c) lack of reasoning of the Chamber's decision.
3. On 3 June 2016, the Prosecutor filed a response (ICC-02/11-01/15-566-Conf), opposing the Application.
4. The Chamber recalls the applicable law relating to article 82(1)(d) of the Statute, as set out in previous decisions. For its request for leave to appeal to be successful, the Defence must satisfy this Chamber that the criteria of article 82(1)(d) of the Statute have been met.
5. In its Application, the Defence for Mr Gbagbo does nothing more than argue anew its views on the protective measures sought, all of which were already taken into consideration by the Chamber in deciding on the Oral Ruling. As such, the issues raised by the Gbagbo Defence do not arise from the Oral

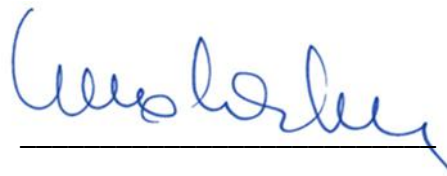
Ruling, but are mere criticisms of the VWU and the Chamber's prior decision stating that it will rely on the Unit's expertise when deciding on protective and special measures.

6. Indeed, in a prior oral ruling, the Chamber stated very clearly that, by their very nature, the information contained in VWU assessments supporting requests for protective measures are mainly confidential *ex parte*; accordingly, it is only in very limited and exceptional scenarios, if any, that the parties might be able to make submissions in order to satisfy the Chamber that it is necessary and appropriate to diverge from the case-specific recommendation made by the VWU and overrule it (ICC-02/11-01/15-T-12-Red-ENG).
7. This approach was further confirmed in the Directions on the Conduct of Proceedings (ICC-02/11-01/15-498-AnxA, para. 57), where the Chamber unmistakably provided that information submitted by the requesting party to the VWU for the purposes of their assessment may remain *ex parte*, and thus not available to the other parties for their submissions. By the same token, the Directions provide for the making of meaningful, case-specific objections to the granting of the requests (as opposed to submissions of a general nature calling into question the expertise and professional assessment of the VWU), whether on the basis of factual information in their possession or of their interpretation of the law (paras. 57-58). A typical scenario which would fall within the scope of paragraphs 57 and 58 of the Directions is the one where information defeating the very purpose of the requested protective measure would be available to the non-requesting party. Accordingly, the statement by the Gbagbo Defence to the effect that the Decision would be '*contraire à l'esprit des instructions de la Chambre formalisées dans la décision sur la conduite des débats du 4 mai 2016*' and, more specifically, of paragraph 57 of the Directions, is not accurate.

8. Additionally, the Application fails to address the specific requirements under Article 82(1)(d) of the Statute, as it only very generally submits that the issues affect the overall fairness of the trial proceedings (and in particular the principle of the '*contradictoire*' and the principle of publicity). Furthermore, the Application does not identify in any way how an immediate resolution of the Appeals Chamber would materially advance the proceedings.

**FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY
REJECTS** the Application.

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



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccia



Judge Geoffrey Henderson

Dated 23 June 2016

At The Hague, The Netherlands