

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 March 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***

Public

**Decision on Requests for an extension of time to submit observations on the
outstanding protocols**

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

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') of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo*, having regard to Article 64(6)(f) of the Rome Statute and Regulation 35(2) of the Regulations of the Court ('Regulations'), issues the following 'Decision on Requests for an extension of time to submit observations on the outstanding protocols'.

I. Procedural History

1. On 4 December 2014, the Single Judge held a status conference during which the Proposed mechanisms for exchange of information on individuals enjoying dual status ('Protocol on dual status witnesses'), the Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses ('Protocol on vulnerable witnesses') and the Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony ('Familiarisation Protocol') (together 'Protocols') were addressed.¹
2. On 18 December 2014, the Single Judge directed the parties, the Legal Representative of Victims ('LRV') and the Victims and Witnesses Unit ('VWU') to expeditiously conclude discussions on the Protocols and to make any further submissions by 27 February 2015.²
3. On 27 February 2015, the Office of the Prosecutor ('Prosecution') and the LRV submitted a joint request for an extension of time to file their

¹ Transcript of Hearing dated 4 December 2014, ICC-02/11-01/11-T-27-CONF-ENG ET, notably pages 15-19, 26-30 and 34-35.

² Order setting deadlines for the filing of submissions on outstanding protocols, ICC-02/11-01/11-739.

submissions on the Protocol on dual status witnesses and on the Protocol on vulnerable witnesses until 6 March 2015 ('Request').³

4. On that same date, by way of email, the defence team for Mr Gbagbo ('Defence') responded to the Request, indicating that it does not oppose it, as long as the Defence is also granted an extension of time until 6 March 2015.⁴
5. Also on 27 February 2015, by way of email, the Single Judge informed the parties and the LRV that the Request had been granted and that the Defence was also granted an extension of time until 6 March 2015.⁵

II. Submissions and Analysis

6. The Prosecution and LRV aver that they are not in a position to comply with the deadline set by the Single Judge for reasons beyond their control.⁶ They submit that the Defence transmitted extensive amendment proposals on 25 and 26 February 2015, preventing them from analysing the suggestions and including them in their observations before the filing deadline.⁷
7. The Defence does not oppose the Request and seeks the same extension of time to file its own submissions. It submits that its proposals are made subject to the suggestions received from the Prosecution, the LRV and the VWU. The Defence further submits that it has been informed of the latest

³ Joint request of the Common Legal Representative of victims and the Prosecution for an extension of time to file their submissions on the outstanding protocols, ICC-02/11-01/11-785-Conf.

⁴ Email from Defence to Chamber, 27 February 2015, 11:37. On that same date, the Single Judge had informed the Defence that if it wished to respond to the Request it may do so by way of email (Email from Chamber to Defence, 27 February 2015, 10:54).

⁵ Email from Chamber, 27 February 2015, 14:44.

⁶ Request, ICC-02/11-01/11-785-Conf, para. 9.

⁷ Request, ICC-02/11-01/11-785-Conf, paras 10-15.

proposals made by the Prosecution, the LRV and the VWU between 19 February 2015 and 23 February 2015.⁸

8. The Single Judge recalls that at the first Status Conference, the parties and the participants were reminded that in order to promote fairness and expeditiousness of the proceedings, they were encouraged to engage in *inter partes* communication and that they should attempt in good faith to agree on a procedure before bringing matters to the attention of the court.⁹ Regarding the Protocol on dual status witnesses and the Protocol on vulnerable witnesses that form the subject of this Request, on 18 December 2014 the Single Judge instructed the parties, the LRV and the VWU to submit their observations by 27 February 2015. This was more than two months ago.¹⁰ The Single Judge therefore finds it difficult to understand why the discussions appear to have taken place so close to the filing deadline.
9. Noting however that the Prosecution and the LRV appear to have received the Defence's suggestions less than 48 hours before the filing deadline, the Single Judge considers that good cause has been shown within the meaning of Regulation 35 of the Regulations to grant an extension of time, thus enabling the Prosecution and the LRV to properly consider the Defence's submissions and to submit meaningful observations thereon.
10. Further, the Single Judge notes that the Defence submits that it could not transmit its proposals at an earlier point in time due to the belated transmission of suggestions by the Prosecution, the LRV and the VWU, and that the Defence may need to adapt its observations depending on the

⁸ Email from Defence to Chamber, 27 February 2015, 11:37.

⁹ Transcript of hearing dated 4 November 2014, ICC-02/11-01/11-T-25-CONF-ENG ET page 4, lines 9-12.

¹⁰ Order setting deadlines for the filing of submissions on outstanding protocols, ICC-02/11-01/11-739.

outcome of any potential future discussion. The Single Judge therefore also grants the Defence an extension of time until 6 March 2015.

11. Finally, the Single Judge notes that, by way of email, the VWU requested leave to submit additional observations on the Familiarisation Protocol,¹¹ on which the Prosecution, the LRV¹² and the Defence¹³ made timely submissions on respectively, 26 February 2015 and 27 February 2015. The VWU submitted its observations on 2 March 2015.¹⁴ Recalling its general direction given during the first status conference as to the use of emails to seize the Chamber,¹⁵ the Single Judge directs the VWU to submit its request via a proper filing ('VWU Request').

FOR THE FOREGOING REASONS, THE SINGLE JUDGE

GRANTS the Request;

GRANTS the Defence's request for an extension of time;

ORDERS the parties and the LRV to file their submissions on the Protocols by 6 March 2015;

INSTRUCTS the VWU to file its request seeking leave to submit additional observations, if any, by 6 March 2015; and

¹¹ Email from VWU, 2 March 2015, 15:46. The Single Judge recalls that, as stated during the first status conference, all email communications shall be addressed to 'Trial Chamber I Communications' (Transcript of Hearing dated 4 November 2014, ICC-02/11-01/11-T-25-CONF-ENG ET, page 5, lines 15-18).

¹² Joint submissions of the Prosecution and the Legal Representative of Victims on the proposed familiarisation protocol, 26 February 2015, ICC-02/11-01/11-783

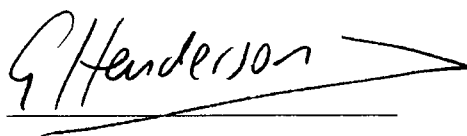
¹³ *Soumissions de la Défense relatives à l'adoption du Protocole « pratique de familiarisation des témoins en vue de leur déposition »*, ICC-02/11-01/11-786.

¹⁴ Victims and Witnesses Unit; s submission on the Protocol on the practices to be used to familiarise witnesses for giving testimony pursuant to Order ICC-02/11-01/11-739, ICC-02/11-01/11-791.

¹⁵ Transcript of Hearing dated 4 November 2014, ICC-02/11-01/11-T-25-CONF-ENG ET, page 5, lines 8-18

DIRECTS the Prosecution, the Defence and the LRV to file their response to the VWU Request, if any, by 9 March 2015.

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

A handwritten signature in black ink that reads "G Henderson". The signature is written in a cursive style and is positioned above a horizontal line that extends across the width of the signature.

Judge Geoffrey Henderson

Single Judge

Dated 4 March 2015

At The Hague, The Netherlands