

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15
Date: 2 November 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***

Confidential

Order on the classification of the Expert Reports and other related documents

Order 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

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Mr Patrick Craig

**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), 67 and 68(3) of the Rome Statute ('Statute') and Regulation 23 *bis* of the Regulations of the Court ('Regulations'), issues the following 'Order on the classification of the Expert Reports and other related documents'.

1. On 30 September 2015, the Chamber issued its 'Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules' ('30 September Order')¹ in which it, *inter alia*, (i) ordered three appointed experts ('Appointed Experts') to conduct an examination of Mr Gbagbo's current health condition and to provide their respective reports ('Expert Reports') by 29 October 2015; (ii) instructed the Registry to file, on the same date, these reports 'confidential, *ex parte*', available to the defence team of Mr Gbagbo ('Gbagbo Defence') and Registry only; and (iii) ordered the Gbagbo Defence to propose reasonable redactions to the Expert Reports for the purpose of notification to the parties and participants by 30 October 2015.
2. On 29 October 2015, the Registry filed the Expert Reports in the record of the case.²
3. On 30 October 2015, the Gbagbo Defence filed its '*Observations portant sur les expurgations à effectuer dans les rapports des trois experts et soumissions quant aux parties et participants à qui ces rapports doivent être communiqués*',³ to which it annexes its proposed redacted versions of the Expert Reports.

¹ ICC-02/11-01/15-253-Conf.

² Transmission by the Registry pursuant to ICC-02/11-01/15-253-Conf of Appointed Experts' reports, ICC-02/11-01/15-325-Conf and three confidential, *ex parte*, only available to the Gbagbo Defence and Registry, annexes.

³ ICC-02/11-01/15-327-Conf-Exp ('Gbagbo Defence Observations') and three confidential, *ex parte*, only available to the Gbagbo Defence and Registry, annexes.

I. Classification of the Expert Reports

4. The Gbagbo Defence proposed redacted versions of the Expert Reports which, it submits, could be notified to the Prosecution.⁴ The Gbagbo Defence, however, objects to the notification of its proposed redacted version of the Expert Reports to the Legal Representative of victims ('LRV') and the defence team for Mr Blé Goudé ('Blé Goudé Defence').⁵ In this regard, the Gbagbo Defence submits that the Expert Reports contain information covered by medical secrecy and the right to privacy and, consequently, may only be shared with third parties if absolutely necessary.⁶ With regard to the participation of the Blé Goudé Defence and the LRV, it recalls, *inter alia*, that: (i) they have not been authorised to question the experts during the scheduled hearing;⁷ and (ii) the issue of Mr Gbagbo's fitness to stand trial concerns them only indirectly.⁸
5. Having reviewed the suggested redactions,⁹ the Single Judge considers that they have been applied in accordance with the instructions provided in the 30 September Order.¹⁰
6. As to the classification of the redacted versions of the Expert Reports, the Single Judge recalls that the Chamber requested that the Gbagbo Defence propose redactions 'for the purpose of notification to *the parties and participants*'.¹¹ Contrary to the Chamber's instructions in the 30 September 2015 Order, the Gbagbo Defence now requests that the redacted versions of the Expert Reports be filed *ex parte* (Gbagbo Defence and Prosecution only). To the extent that the Gbagbo Defence is now requesting reconsideration, this should have been clearly

⁴ Gbagbo Defence Observations, ICC-02/11-01/15-327-Conf-Exp, para. 8 and page 9.

⁵ Gbagbo Defence Observations, ICC-02/11-01/15-327-Conf-Exp, paras 8 and 9-28, and page 9.

⁶ Gbagbo Defence Observations, ICC-02/11-01/15-327-Conf-Exp, para. 7.

⁷ Gbagbo Defence Observations, ICC-02/11-01/15-327-Conf-Exp, paras 9-12 referring to 30 September 2015 Order, ICC-02/11-01/15-252-Conf, para.

⁸ Gbagbo Defence Observations, ICC-02/11-01/15-327-Conf-Exp, para. 12.

⁹ Gbagbo Defence Observations, ICC-02/11-01/15-327-Conf-Exp, paras. 4-6 and annexes 1, 2 and 3.

¹⁰ 30 September 2015 Order, ICC-02/11-01/15-253-Conf, para. 19.

¹¹ 30 September 2015 Order, ICC-02/11-01/15-253-Conf, para. 19. [emphasis added]

formulated and filed with the appropriate classification so as to provide the parties and participants an opportunity to respond.

7. The Single Judge recalls that the Appointed Experts were retained in order to facilitate the adjudication of any issues concerning Mr Gbagbo's fitness to stand trial as well as any practical modalities needed to facilitate his attendance at trial.¹² The Single Judge also notes that the Blé Goudé Defence and the LRV were invited to attend the hearing to be held in private session on 10-12 November 2015.¹³ Although Mr Gbagbo has a right to confidentiality of his medical information, this right is not absolute.¹⁴ In its submissions, the Gbagbo Defence only makes general reference to the confidentiality of medical information, but it does not in any way identify specific information that in its view needs to be withheld from the Blé Goudé Defence or the LRV or the reasons why withholding this access is necessary. In balancing Mr Gbagbo's privacy rights with the rights of Mr Blé Goudé under Article 67(1)(c) of the Statute and with the interests of the victims, the Single Judge determines that, at the hearing, the Blé Goudé Defence and the LRV shall be permitted to receive the confidential-redacted versions of the Expert Reports, in order to be in a position to make oral submissions thereon. However, the Blé Goudé Defence and the LRV shall only be permitted to question the Appointed Experts on issues specifically pertaining to their respective interests under Article 67(1)(c) and 68(3) of the Statute. In light of the above, and consistent with the Chamber's previous orders,¹⁵ the Single Judge hereby instructs the Registry to file in the case record the proposed redacted versions of the Expert Reports as 'confidential'.

¹² Decision granting in part the Prosecution request for an examination of Mr Gbagbo pursuant to rule 135 of the Rules and instructing the parties to file supplemental submissions concerning the selection of expert(s), 7 September 2005, ICC-02/11-01/15-206-Conf.

¹³ Decision granting the request of the Gbagbo Defence and re-scheduling opening statements, 28 October 2015, ICC-02/11-01/15-322, page 7.

¹⁴ Order to provide Appointed Expert with access to Mr Gbagbo's medical record, 20 October 2015, ICC-02/11-01/15-302-Conf, para. 17.

¹⁵ Order to provide Appointed Expert with access to Mr Gbagbo's medical record, 20 October 2015, ICC-02/11-01/15-302-Conf, pages 12-13; Decision granting the request of the Gbagbo Defence and re-scheduling opening statements, 28 October 2015, ICC-02/11-01/15-322, page 7.

II. Directions concerning the conduct of the hearing to be held on 10-12 November 2015

8. Pursuant to the Chamber's decision granting the request of the Gbagbo Defence to order the appointed experts to appear at the hearing now scheduled for 10-12 November 2015,¹⁶ and in order to facilitate the attendance of the experts and the scheduling for the hearing, the Single Judge orders the Gbagbo Defence and the Prosecution to indicate at its earliest opportunity and no later than 5 November 2015:

i. Which expert(s) it intends to question, if applicable; and,

ii. An estimation of the time needed do so.

9. The Single Judge emphasises in this regard that the examination of the experts will be confined to the Gbagbo Defence's request of 29 October 2015¹⁷ – i.e. to allow the parties the opportunity to question the appointed experts on the methodology for their examinations and the contents of their reports – and, in any event, will be tightly managed by the Chamber.

10. At the hearing, the Blé Goudé Defence and the LRV will be permitted to question the experts on issues specifically pertaining to their interests, as indicated above. Should either wish to do so, the Single Judge orders the Blé Goudé Defence and the LRV to indicate at its earliest opportunity and no later than 5 November 2015:

i. Which experts it intends to question, if applicable; and,

ii. An estimation of the time needed do so.

¹⁶ Decision granting the request of the Gbagbo Defence and re-scheduling opening statements, ICC-02/11-01/15-322.

¹⁷ *Version confidentielle expurgée de la «Requête aux fins d'ordonner la présence des trois experts nommés par la Chambre lors de l'audience du 5 novembre 2015» déposée le 27 octobre 2015* (ICC-02/11-01/15-318-Conf-Exp), ICC-02/11-01/15-318-Conf-Red.

11. As indicated in the Chamber's order of 30 September 2015,¹⁸ the Gbagbo Defence, Prosecution and the Registry will be provided an opportunity to make oral submissions at the end of hearing. The Blé Goudé Defence and LRV will also be invited to make brief oral submissions at the end of the hearing, concerning issues specifically pertaining to their interests. On this basis, the Single Judge orders the parties and participants to indicate an estimation of the time needed for such submissions.

III. Filings 318-Conf-Exp and 321-Conf-Exp

12. The Chamber is of the view that the reasons given for the redactions applied to the confidential-redacted version of filing 318-Conf-Exp are not satisfactory because redactions are not applied to the content of the Expert Reports, but rather to how the Appointed Experts' conducted their examinations. Pursuant to Regulation 23 *bis* of the Regulations, the Single Judge therefore decides that both filing 318-Conf-Exp and filing 321-Conf-Exp may be reclassified 'confidential'.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

INSTRUCTS the Registry to file forthwith confidential-redacted versions of the Expert Reports, as proposed by the Gbagbo Defence in annexes to ICC-02/11-01/15-327-Conf-Exp, and to notify all parties and participants to the present proceedings;

ORDERS the Prosecution and Gbagbo Defence, in accordance with paragraph 8 above, to file by 5 November 2015 a notification indicating (i) which experts it intends to question, if applicable, and (ii) an estimation of the time needed to do so;

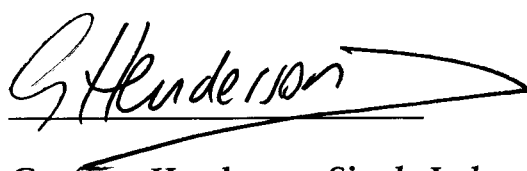
ORDERS the Blé Goudé Defence and the LRV, in accordance with paragraph 10 above, to file by 5 November 2015 a notification indicating (i) which experts it intends to question, if applicable, and (ii) an estimation of the time needed to do so;

¹⁸ 30 September 2015 Order, ICC-02/11-01/15-253-Conf, para. 20.

ORDERS the parties and participants to file, by 5 November 2015, a notification indicating an estimation of time needed to make any oral submissions, if applicable, at the conclusion of the hearing; and

INSTRUCTS the Registry to reclassify 'confidential' ICC-02/11-01/15-318-Conf-Exp, ICC-02/11-01/15-321-Conf-Exp and ICC-02/11-01/15-327-Conf-Exp.

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 cursive.

Judge Geoffrey Henderson, Single Judge

Dated 2 November 2015

At The Hague, The Netherlands