

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/11-01/15**
Date: **22 September 2022**

TRIAL CHAMBER VII

Before: Judge Kimberly Prost, Presiding Judge
Judge Miatta Maria Samba
Judge Sergio Gerardo Ugalde Godínez

SITUATION IN THE CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ

Public Redacted

**Decision on the Filing of a Public Redacted Version of the List of Email
Decisions on the Record**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Other

TRIAL CHAMBER VII of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 64, 67 and 68 of the Rome Statute (the ‘Statute’), and Rule 81(4) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Filing of a Public Redacted Version of the List of Email Decisions on the Record’.

I. PROCEDURAL HISTORY

1. This matter arises from a request made on 3 September 2021 by the Defence for Mr. Gbagbo that email decisions from this case be included in the public record of the case.¹ On 13 April 2022, the Chamber issued a decision (the ‘Decision’) allowing the request.² The Decision was filed together with Confidential Annex A which contained a list of email decisions (the ‘List of Email Decisions’),³ and it instructed ‘the Registry to consult with the parties and participants with a view to generating a public version of the list, with any necessary redactions, which can be placed on the record.’ On 30 June 2022, the Registry filed the Registry’s First Submission⁴ and attached an updated version of the List of Email Decisions with the proposed redactions (the ‘Updated List of Email Decisions’).⁵

2. On 18 July 2022, upon reviewing the proposed redactions, the Chamber issued the ‘Order in Respect of Proposed Redactions to the List of Email Decisions’ (the ‘Order’).⁶ In the Order, the Chamber authorised proposed redactions by the Registry of the names of staff members of the Court.⁷ With respect to the remaining proposed redactions, the Chamber found that no justification had been provided and ordered the

¹ [Request for the Decisions which the Judges Issued via Email to Be Placed in the Record of the Case](#), 3 September 2021, ICC-02/11-01/15-1410-tENG.

² [Decision on the Defence for Mr Gbagbo’s Requests for the Record of the Case to be Made Public, the Creation of a Public Database and for Email Decisions to be Placed on the Record of the Case](#), 13 April 2022, ICC-02/11-01/15-1430 (the ‘Decision’).

³ Confidential Annex A to the Decision, 13 April 2022, ICC-02/11-01/15-1430-Conf-AnxA (the ‘List of Email Decisions’).

⁴ [Implementation of the “Decision on the Defence for Mr Gbagbo’s Requests for the Record of the Case to be Made Public, the Creation of a Public Database and for Email Decisions to be Placed on the Record of the Case” \(ICC-02/11-01/15-1430\)](#), 30 June 2022, ICC-02/11-01/15-1431 (the ‘Registry’s First Submission’).

⁵ Confidential Annex A to the Registry’s Submission, 30 June 2022, ICC-02/11-01/15-1431-Conf-AnxA VWS (the ‘Updated List of Email Decisions’).

⁶ [Order in Respect of Proposed Redactions to the List of Email Decisions](#), 18 July 2022, ICC-02/11-01/15-1433 (the ‘Order’).

⁷ [Order](#), para. 4.

parties, participants and relevant sections of the Registry to submit justifications for their proposed redactions.

3. On 24 August 2022, the Registry filed a consolidated version of the parties' and participants' justifications for their proposed redactions (the 'Registry's Updated Submissions').⁸

II. ANALYSIS

4. Following its review of the Registry's Updated Submissions, the Chamber will address the proposals and justifications provided by the parties, participants and Registry in turn.

A. Redactions Proposed by the Office of the Prosecutor

5. The Chamber notes that the Office of the Prosecutor (the 'Prosecution') is no longer seeking any redactions to the text.⁹ The Chamber has reviewed the original proposals by the Prosecution, and decides that no redactions need be applied.¹⁰

B. Redactions Proposed by the Common Legal Representative of Victims

6. The Common Legal Representative of Victims (the 'CLR') has requested the redaction of the pseudonym numbers assigned to certain witnesses as referenced [REDACTED].¹¹ She submits that because the witness' numbers remain redacted in the [REDACTED],¹² they should be redacted in the Updated List of Email Decisions as well.¹³

7. The Chamber rejects the CLR's proposed redactions in this regard. The Chamber considers that the approach taken in this previous filing is not determinative of the issue. Pseudonyms are assigned to witnesses in order to safeguard the identity of

⁸ Registry Submission Pursuant to the "Order in Respect of Proposed Redactions to the List of Email Decisions"(ICC-02/11-01/15-1433), 24 August 2022, ICC-02/11-01/15-1436-Conf with Confidential Annex A (the 'Registry's Updated Submissions').

⁹ Registry's Updated Submissions, p. 5.

¹⁰ The Prosecution's original proposed redactions can be found in the [REDACTED].

¹¹ See Registry's Updated Submissions, p. 5 referring to email from the CLR to the Registry, dated 16 June 2022, at 09:28.

¹² [REDACTED].

¹³ See Registry's Updated Submissions, p. 5 referring to email from the CLR to the Registry, dated 16 June 2022, at 09:28.

the witness, while at the same time retaining a clear record as to the participation of the witness in the proceedings. In principle, there is no statutory or regulatory basis for the redaction of a pseudonym number which is not itself identifying. To the contrary, it is designed to safeguard the identity of the witness.

8. Further, the issue for this Chamber is not consistency of decisions, but rather, whether redactions are justified in the context of the text of the document to be publicly disclosed. The Chamber considers that there is nothing in the text [REDACTED] which on its own, or combined with other information, will identify the witnesses. Accordingly, the CLRV's proposed redactions to [REDACTED] are rejected.

C. Redactions proposed by the Defence for Mr. Gbagbo

9. The Chamber notes that the Defence for Mr. Gbagbo solely maintained and justified two of its originally proposed redactions.¹⁴ In respect of the first proposed and justified redaction found in [REDACTED], the Chamber accepts the proposed redactions [REDACTED].¹⁵

10. However, it should be noted that while the Chamber accepts these proposed redactions, it does not do so on the basis of the justification provided, [REDACTED] and thus the information is factually incorrect, but rather because [REDACTED]. Thus, the redaction is accepted not on the proposed basis of factual inaccuracy,¹⁶ but rather on the basis of securing the safety, security and confidentiality of the witness.

11. Further, the Chamber also accepts the justification provided regarding [REDACTED] relating to Mr. Gbagbo and orders the retention of this redaction.¹⁷ The Chamber notes that the Defence for Mr. Gbagbo has acknowledged in their email correspondence with the Registry¹⁸ that they are no longer seeking the remainder of

¹⁴ See Registry's Updated Submissions, pp 5-6 referring to email from the Defence for Mr. Gbagbo to the Registry dated 16 August 2022 at 10:01. The Defence's original proposed redactions can be found in the [REDACTED].

¹⁵ [REDACTED]

¹⁶ The requested redactions found in [REDACTED] have to do with [REDACTED].

¹⁷ These accepted proposed redactions can be found in [REDACTED]. The Defence for Mr. Gbagbo reasoned that in order to preserve the [REDACTED], must be kept confidential. The lines requested to be redacted are: [REDACTED].

¹⁸ Registry's Updated Submissions, p. 5 referring to email from the Defence for Mr. Gbagbo to the Registry, dated 16 August 2022, at 10:01.

their originally proposed redactions. Nevertheless, the Chamber has reviewed the remainder of the originally proposed redactions and decides that the original proposed redaction found in [REDACTED]¹⁹ should be redacted as well for consistency given the [REDACTED]. Beyond that, no further redactions need be applied.

D. Redactions Proposed by the Defence for Mr. Blé Goudé

12. The only redaction requested by the Defence for Mr. Blé Goudé is the redaction to a name in [REDACTED], to ensure the safety and security of the support staff. Similarly, the Chamber accepts the proposal and justification²⁰ from the Defence for Mr. Blé Goudé and orders the retention of this redaction as well.

E. Redactions Proposed by the Registry

13. First, the Chamber recalls that it has previously authorised the redaction of staff names.²¹ Second, the Chamber notes that while the Registry had originally proposed additional redactions,²² those are ultimately covered by the proposals of the parties and participants and thus no further redactions are merited.

F. Conclusion

14. Accordingly, the Chamber directs the Registry to apply and remove redactions as decided in the present decision and to file the final redacted version of the Updated List of Email Decisions on the record with the title ‘Public Redacted Version of the List of Email Decisions issued in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*’.

¹⁹ The ordered redaction is as follows [REDACTED].

²⁰ Registry’s Updated Submissions, p. 5 referring to email from the Defence for Mr. Blé Goudé to the Registry, dated 20 July 2022, at 10:01.

²¹ [Order](#), para. 4.

²² The VWS’ original proposed redactions can be found [REDACTED].

FOR THESE REASONS, THE CHAMBER HEREBY

AUTHORISES the proposed redactions as specified in paragraphs 9-13 above; and

ORDERS the Registry to proceed in accordance with paragraph 14 above.

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




Judge Kimberly Prost

Presiding Judge



Judge Miatta Maria Samba



Judge Sergio Gerardo Ugalde Godínez

Dated 22 September 2022

At The Hague, The Netherlands