

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 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

Decision on request for leave to appeal the 'Decision on objections concerning access to confidential material on the case record'

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

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

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 ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* ('Gbagbo and Blé Goudé case'), having regard to Article 82(1)(d) of the Rome Statute ('Statute'), issues the following 'Decision on request for leave to appeal the "Decision on objections concerning access to confidential material on the case record"'

1. On 24 June 2015, the Single Judge directed, *inter alia*, the parties and participants to (i) upload all materials from the eCourt databases in *The Prosecutor v. Laurent Gbagbo* case ('Gbagbo case') and *The Prosecutor v. Charles Blé Goudé* case ('Blé Goudé case') to the eCourt database in the *Gbagbo and Blé Goudé* case and (ii) release them to all parties and participants, unless 'confidential, *ex parte*' classification is 'demonstrably justified' ('Impugned Decision').¹
2. On 30 June 2015, the defence for Mr Gbagbo ('Gbagbo Defence') requested leave to appeal the following issue ('Gbagbo Defence Request'): whether the Single Judge committed a legal error in failing to indicate the reasons that the Defence should communicate to the Legal Representative of Victims ('LRV') all non-public evidentiary materials ('Issue').² On 3 and 6 July 2015, the Office of the Prosecutor³ and LRV,⁴ respectively, responded, submitting that the Issue does not satisfy the leave to appeal criteria, particularly as it does not arise from the Impugned Decision.

¹ Decision on objections concerning access to confidential material on the case record, ICC-02/11-01/15-101, with three public annexes (ICC-02/11-01/15-101-AnxA; ICC-02/11-01/15-101-AnxB; ICC-02/11-01/15-101-AnxC), para. 19. See also paras 13 and 16.

² *Demande d'autorisation d'interjeter appel de la décision du Juge unique du 24 juin 2015* « on objections concerning access to confidential material on the case record » (ICC-02/11-01/15-101), ICC-02/11-01/15-113-Exp. A public redacted version was filed the same day (ICC-02/11-01/11-113-Red).

³ Prosecution's response to Laurent Gbagbo's application for leave to appeal the Decision on objections concerning access to confidential material on the case record, ICC-02/11-01/15-119.

⁴ Response to the "Demande d'autorisation d'interjeter appel de la décision du Juge unique du 24 juin 2015 « on objections concerning access to confidential material on the case record » (ICC-02/11-01/15-101)" filed by the Defence of Mr. Gbagbo, ICC-02/11-01/15-122.

3. The Single Judge recalls the applicable law relating to Article 82(1)(d) of the Statute as set out in previous decisions.⁵
4. The Chamber and Single Judge have repeatedly affirmed⁶ – as provided in the Court’s regulatory framework,⁷ as initially ordered at the first status conferences held in the *Gbagbo* and *Blé Goudé* cases⁸ and as most recently recalled in the Impugned Decision⁹ – that all parties and participants have a right to access the entire case record (including evidentiary material), unless ‘confidential, *ex parte*’ classification is justified. Thus, insofar as the Issue challenges this general right of access, it does not arise from the Impugned Decision. Moreover, on its face, the Issue is based on a misrepresentation of the Impugned Decision. Contrary to the assertion that the Single Judge ordered the release of *all* evidentiary materials to the LRV, the Impugned Decision expressly provided that materials could be uploaded as ‘confidential, *ex parte*’, if ‘demonstrably justified’.¹⁰
5. As the Issue challenges findings reached in decisions other than the Impugned Decision and is founded on a misrepresentation, the Issue cannot satisfy Article 82(1)(d) of the Statute.¹¹ Having so found, the Single Judge need not address the remaining leave to appeal criteria. Nevertheless, the Single Judge notes that, on 6 July 2015, the Gbagbo Defence filed submissions concerning the classification of

⁵ Decision on Defence’s requests seeking leave to appeal the ‘Decision on the Legal Representative of Victims’ access to certain confidential filings and to the case record’ and seeking suspensive effect of it, 11 March 2015, ICC-02/11-01/11-809, paras 8-10; Decision on Defence requests for leave to appeal the ‘Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters’, 22 April 2015, ICC-02/11-01/15-42, paras 12-13; Decision on Defence requests for leave to appeal the ‘Order setting the commencement date for trial’, 2 July 2015, ICC-02/11-01/15-117, paras 18-20.

⁶ See e.g. Decision on requests for clarification concerning review of the case record and extension of time, 13 April 2015, ICC-02/11-01/15-30, paras 8-11; Decision on the Legal Representative of Victims’ access to certain confidential filings and to the case record, 19 January 2015, ICC-02/11-01/11-749, paras 15 and 20. See also ICC-02/11-01/11-809, paras 18 and 33.

⁷ See, *inter alia*, Rules 121(10), 131(2) and 137 of the Rules of Procedure and Evidence.

⁸ Transcript of hearing on 4 November 2014, ICC-02/11-01/11-T-25-CONF-ENG CT, page 4, line 22 to page 5, line 7; Transcript of hearing on 13 February 2015, ICC-02/11-02/11-T-9-CONF-ENG ET, page 6, lines 5-13.

⁹ Impugned Decision, ICC-02/11-01/15-101, para. 13.

¹⁰ Impugned Decision, ICC-02/11-01/15-101, para. 19. See also paras 13 and 16 (deciding that certain materials could be uploaded as ‘confidential, *ex parte*’).

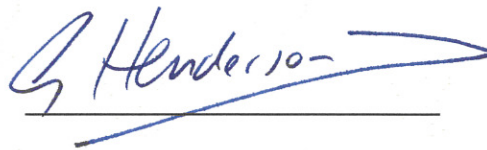
¹¹ ICC-02/11-01/15-117, para. 19.

evidentiary material.¹² These submissions are pending before the Chamber. Further, as already stressed above, the Gbagbo Defence may classify any evidentiary material as 'confidential, *ex parte*', so long as such classification is demonstrably justified. In turn, the effect of the Issue on the fairness and expeditiousness of the proceedings or outcome of the trial, even if it did arise from the Impugned Decision, is unduly speculative and immediate appellate resolution could not materially advance the proceedings.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Gbagbo Defence Request.

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

A handwritten signature in blue ink, reading "G Henderson", with a long horizontal line extending to the right from the end of the signature.

Judge Geoffrey Henderson, Single Judge

Dated 10 July 2015

At The Hague, The Netherlands

¹² *Soumissions portant sur le niveau de confidentialité et sur la classification à attribuer aux documents émanant de la Défense de Laurent Gbagbo listés à l'Annexe C de la décision du Juge unique du 24 juin 2015 (ICC-02/11-01/15-101) et soumissions sur le niveau de confidentialité et sur la classification à attribuer aux documents non mentionnées par le Juge unique dans sa décision du 24 juin 2015, ICC-02/11-01/15-124-Red, paras 52-61.*