

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15
Date: 17 August 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 'Second 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, 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 "Second decision on objections concerning access to confidential material on the case record"':

1. On 21 July 2015, the Single Judge decided to transfer certain documents to the *Gbagbo and Blé Goudé* case record as 'confidential' ('Impugned Decision').¹
2. On 30 June 2015, the defence for Mr Gbagbo ('Gbagbo Defence') requested leave to appeal the following issue ('Request'): whether the absence of reasoning in the Impugned Decision creates legal insecurity and deprives the decision of any legal basis since there are no criteria given by the Single Judge which would allow the parties to know which documents may be confidential and withheld from the Legal Representative of Victims ('LRV') or other parties ('Issue').²
3. On 30 and 31 July 2015, the Office of the Prosecutor³ and LRV,⁴ respectively, responded, submitting that the Issue does not satisfy the leave to appeal criteria.
4. The Single Judge recalls the applicable law relating to Article 82(1)(d) of the Statute as set out in previous decisions.⁵
5. In the Impugned Decision, the Single Judge expressly considered all objections and provided his reasons for dismissing them. He found that the Gbagbo Defence

¹ Second decision on objections concerning access to confidential material on the case record, ICC-02/11-01/15-150.

² *Demande d'autorisation d'interjeter appel de la décision du Juge unique du 21 juillet 2015 intitulée «Second decision on objections concerning access to confidential material on the case record»* (ICC-02/11-01/15-150), ICC-02/11-01/15-163, paras 29-41.

³ Prosecution response to Laurent Gbagbo's application for leave to appeal "the Second Decision on objections concerning access to confidential material on the case record", ICC-02/11-01/15-170.

⁴ Common Legal Representative's Response to Mr. Gbagbo's request for leave to appeal the "Second decision on objections concerning access to confidential material on the case record" (ICC-02/11-01/15-150), ICC-02/11-01/15-171.

⁵ See Decision on request for leave to appeal the 'Decision on objections concerning access to confidential material on the case record', 10 July 2015, ICC-02/11-01/15-132, para. 3 and the decisions cited in footnote 5.

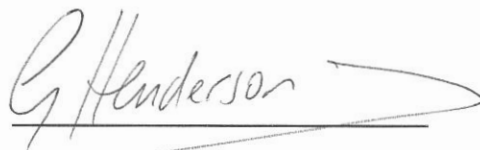
had failed to justify 'confidential, *ex parte*' classification for any individual item.⁶ Regulation 23 *bis*(1) of the Regulations of the Court obliges the filing party to state the factual and legal basis for the restricted classification of any document. Contrary to the Gbagbo Defence's assertions otherwise, these requirements – representing the fundamental criteria for justifying restricted classification – are clear and do not originate in the Impugned Decision. Accordingly, the Issue does not arise from and misrepresents the Impugned Decision.

6. Having so found, the Single Judge need not address the remaining leave to appeal criteria. Nevertheless, the Single Judge considers that the Gbagbo Defence's submissions concerning the impact of the Impugned Decision are unsubstantiated and abstract. The Impugned Decision concerned the transfer of a limited number of documents on a 'confidential' basis. Further, it does not preclude the parties and participants from classifying any document or material as 'confidential, *ex parte*', if justified. Accordingly, the Gbagbo Defence fails to satisfy any of the cumulative criteria set out in Article 82(1)(d) of the Statute.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request.

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

A handwritten signature in cursive script, reading "G. Henderson", is written over a horizontal line. The signature is written in black ink and is positioned above the printed name of the judge.

Judge Geoffrey Henderson, Single Judge

Dated 17 August 2015

At The Hague, The Netherlands

⁶ Impugned Decision, ICC-02/11-01/15-150, paras 14-16 and 18.