



Original: English

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

Date: 15 June 2017

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuca
Judge Geoffrey Henderson

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

Public

**Decision on the request for leave to appeal
an oral decision of 10 May 2017**

To be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

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Counsel for the Defence

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Legal Representatives of the Victims

Paolina Massidda

Legal Representatives of the 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

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber I (“Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Article 82(1)(d) of the Rome Statute, Rule 155 of the Rules of Procedure and Evidence, and Regulation 65 of the Regulations of the Court issues this decision on the request for leave to appeal an oral decision of 10 May 2017, filed by the Defence of Laurent Gbagbo on 16 May 2017 (“Request”).¹

1. On 10 May 2017, the Chamber rejected a request by the Defence of Laurent Gbagbo that the identity card of Witness P-0109 be placed on the case record. The Chamber determined that this was not necessary and that the identity of the witness was not at issue as the witness had given his identity to the Court.²
2. In the Request, the Defence of Laurent Gbagbo seeks leave to appeal with respect to the following issues:
 - (i) whether the Chamber erred in law in preventing the Defence from obtaining evidence allowing to corroborate the witness’s testimony (“First Issue”);
 - (ii) whether the Chamber erred in law in prohibiting the Defence from obtaining evidence indispensable for its investigation and for verifying the testimony of Witness P-0109 (“Second Issue”); and
 - (iii) whether the Chamber erred in law in not providing reasons for its decision (“Third Issue”).

¹ “Demande d’autorisation d’interjeter appel de la décision de la Chambre rendue oralement le 10 mai 2017 refusant à la Défense que la pièce d’identité de P-0109 soit versée au dossier de l’affaire”, ICC-02/11-01/15-923-Conf.

² ICC-02/11-01/15-T-155-CONF-ENG, pp. 26-27.

3. On 22 May 2017, the Prosecutor responded to the Request, objecting to the granting of leave to appeal.³
4. The provision relevant for the resolution of the Request is Article 82(1)(d) of the Statute. In brief, an interlocutory appeal can be allowed in respect of an issue arising out of the impugned decision, meaning issues essential for the disposition of the matter. In addition, appeal can only be certified in respect of issues which would significantly affect either the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Chamber, immediate appellate resolution may materially advance the proceedings.

First and Second Issue

5. The Chamber considers it appropriate to consider the First and Second Issue together, as they both relate to the Defence's argument that it was prevented from obtaining evidence to corroborate the testimony of Witness P-0109 and for its investigation.
6. With regard to the First Issue, the Defence of Laurent Gbagbo argues that having the identity card of Witness P-0109 on record would allow: (i) to establish the existence of such document; (ii) to corroborate the witness's answer on the question of whether the identity card showed his ethnicity; and (iii) to compare the information from the identity card with the information given by the witness.⁴ Concerning the Second Issue, the Defence of Laurent Gbagbo submits that it was prevented from verifying the witness's identity and hence the plausibility of his testimony, as well as from investigating.⁵

³ ICC-02/11-01/15-929-Conf.

⁴ Request, paras 16-18.

⁵ *Ibid.*, paras 19-25.

7. The Chamber considers that these issues are not appealable, within the meaning of Article 82(1)(d) of the Statute. The factual issue to which they relate is of such little significance that it does not constitute an appealable issue significantly affecting the fair and expeditious conduct of the proceedings, much less the outcome of the trial. First, the existence of the identity card of Witness P-0109 was never at issue in the proceedings. Second, the witness never alleged that his identity card included information on his ethnicity. On the contrary, the witness specifically testified that it did not. Thus, the argument made by the Defence of Laurent Gbagbo that the identity card should be submitted to corroborate the witness's testimony or to make it "quite clear that his ethnicity is not shown",⁶ is without any merit. The submission of the witness's identity card would not have altered the content of the witness's testimony, or the evaluation thereof, in any way.
8. Further, the Chamber is of the view that the witness indeed provided his identifying details to the Court before the start of his questioning, and that until the question of submitting his identity card on the case record was raised, the witness's identity had not been at issue. The Chamber also points out that the fact of the identity card of Witness P-0109 not being on record does not in any way impact the ability of the Defence to investigate, and this with regard to Witness P-0109 specifically since the Defence had been aware of the witness's identifying details for a number of years before his testimony. Therefore, as the First and Second Issue do not qualify as appealable issues, leave to appeal cannot be granted.

⁶ ICC-02/11-01/15-T-155-CONF-ENG, p. 26 l. 4.

Third Issue

9. On the Third Issue, namely whether the Chamber erred in law by not providing reasoning for its decision, the Chamber notes, although succinct, the ruling of the Presiding Judge is based on two reasons: (a) the ID card of the witness was not an issue as (b) the witness had given his identity to the Court. As the reasons are apparent from the transcript, the question whether it was permissible for the Chamber not to give reasons does not arise. Accordingly, there is no appealable issue and leave to appeal cannot be granted.
10. Regardless of whether or not the decision meets the standard of an adequately reasoned decision, the Chamber is of the view that, even if there were an appealable issue, it would relate to a question of little significance that would not affect the fair and expeditious conduct of the proceedings or the outcome of the trial. For these reasons, the Third Issue is also rejected.

Level of classification of the submissions

11. The Chamber notes that the parties and participants have to date not filed public redacted versions of the submissions made for the purpose of the present decision. In the interest of the publicity of the proceedings, the Chamber deems it necessary to reclassify the relevant part of the transcript in which the impugned decision was issued and to set time limits for the parties to file public redacted versions of their submissions.

FOR THESE REASONS, THE CHAMBER HEREBY

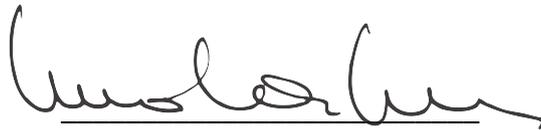
REJECTS the Request;

ORDERS the Registry to reclassify as “public” part of transcript ICC-02/11-01/15-T-155-CONF-ENG at page 25 line 22 to page 27 line 12;

ORDERS the Defence of Laurent Gbagbo to file, by 21 June 2017, a public redacted version of filing ICC-02/11-01/15-923-Conf; and

ORDERS the Prosecutor to file, by 26 June 2017, a public redacted version of filing ICC-02/11-01/15-929-Conf.

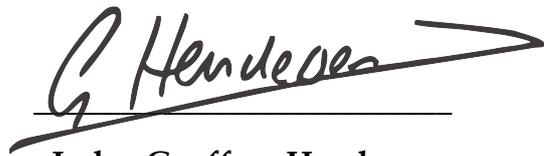
Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated this 15 June 2017

At The Hague, The Netherlands