

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **9 July 2018**

**TRIAL CHAMBER I**

**Before: Judge Cuno Tarfusser, 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 the "*Demande d'autorisation d'interjeter appel de la 'Single Judge  
Decision on confidential filings no. 1102 and 1111'*"**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart  
Eric MacDonald

**Counsel for Laurent Gbagbo**

Mr Emmanuel Altit  
Ms Agathe Bahi Baroan

**Counsel for Mr Charles Blé Goudé**

Geert-Jan Alexander Knoops  
Claver N'dry

**Legal Representatives of Victims**

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**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Judge Cuno Tarfusser**, acting as Single Judge on behalf of Trial Chamber I 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 (“Statute”); Rule 155 of the Rules of Procedure and Evidence (“Rules”) and Regulation 65 of the Regulations of the Court, issues this decision on the “*Demande d’autorisation d’interjeter appel de la ‘Single Judge Decision on confidential filings no. 1102 and 1111’*” (“Request”).

1. On 11 January 2018, the Defence of Mr Gbagbo filed the “*Réponse de la Défense à la « Registry Transmission of the Declarations made by Twelve Witnesses pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence » (ICC-02/11-01/15-1090-Conf)*”.<sup>1</sup>
2. On 26 January 2018, the Prosecutor filed her response.<sup>2</sup>
3. On 21 June 2018, the Single Judge communicated to the parties his decision in respect of the aforesaid filings, indicating that: (i) there is no reason to depart from the system adopted by the Chamber in its “Decision no. 405”<sup>3</sup> and (ii) the declarations and attestations transmitted by the Registry with confidential filing no. 1090 are recognised as submitted (“Impugned Decision”).<sup>4</sup>
4. On 27 June 2018, the Defence of Mr Gbagbo filed its Request.<sup>5</sup>
5. On 2 July 2018, the Prosecutor submitted her response, opposing the Request.<sup>6</sup>

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<sup>1</sup> ICC-02/11-01/15-1102.

<sup>2</sup> Prosecution’s response to Gbagbo Defence submission ICC-02/11-01/15-1102-Conf, ICC-02/11-01/15-1111.

<sup>3</sup> Decision on the submission and admission of evidence, 29 January 2016, ICC-02/11-01/15-405.

<sup>4</sup> E-mail from Trial Chamber I Communications.

<sup>5</sup> ICC-02/11-01/15-1191.

<sup>6</sup> Prosecution’s response to Laurent Gbagbo’s application for leave to appeal the “Single Judge Decision on confidential filings no. 1102 and 1111”, ICC-02/11-01/15-1191-Conf, ICC-02/11-01/15-1192.

6. The Defence of Mr Blé Goudé and the Legal Representative for Victims did not file a response.
7. The provision applicable 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 issues arising out 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 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.
8. The Defence of Mr. Gbagbo seeks leave to appeal in respect of the following three issues: (i) the fact that the decision was taken by the Single Judge and not by the Chamber invalidates the decision; (ii) the Single Judge erred by considering the matter raised by the Defence relevant to admissibility; (iii) even if the matter concerned admissibility, the Single Judge erred by not taking a decision immediately.
9. As regards the first issue, the Defence for Mr Gbagbo contends that the use of Rule 132*bis* of the Rules for the purpose of the Impugned Decision is invalid as the Single Judge was designated for the purpose of trial preparation. It also submits that pursuant to Rule 132*bis* (6) of the Rules the Impugned Decision is essential to the rights of the accused.
10. Concerning the second issue, the Defence for Mr Gbagbo argues that in the Impugned Decision the Single Judge confused the admissibility of evidence with the presentation of witnesses' testimonies pursuant to Rule 68 of the Rules. It argues that Rule 68(2) of the Rules leaves no discretion to the judges and requires judges to appraise the existence of a witness when he/she testifies or when his/her statement is submitted. Accordingly, the Defence of Mr Gbagbo

submits that the matter raised by the Defence could not be postponed to a later stage of the proceedings.

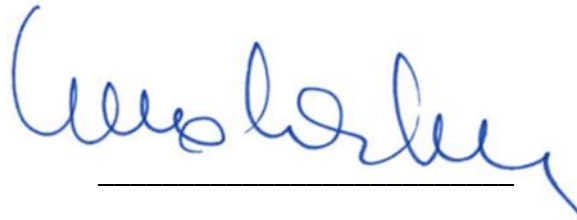
11. Similarly, in relation to the third issue, the Defence for Mr Gbagbo argues that Decision no. 405 states that the Chamber may rule on admissibility for categories of evidence such as the Rule 68(2)(b) statements, which touch upon the fairness of proceedings. In its view, the Chamber should have decided on the admissibility of Rule 68(2)(b) statements immediately.
12. The Defence of Mr Gbagbo submits that the Impugned Decision places it in an unprecedented situation of not knowing which prosecution witnesses are admitted and therefore affects the fairness of proceedings. It also argues that if the Appeals Chamber does not decide on this matter, a final judgment could be taken without the Defence knowing which witnesses were considered by the Chamber. Accordingly, the Defence for Mr Gbagbo submits that an immediate resolution by the Appeals Chamber is required.
13. The Prosecutor submits that none of the three issues arise of the Impugned Decision. She contends that the Request largely challenges the Chamber's past decision which allowed the submission of witnesses statements pursuant to Rule 68(2)(b) of the Rules.<sup>7</sup> In her view, all three issues misapprehend the Impugned Decision or constitute a mere disagreement with the exercise of the Single Judge's discretion. The Prosecutor finally submits that the Request does not show that the other requirements under Article 82(1)(d) of the Statute are met.

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<sup>7</sup> Decision on the "Prosecution's consolidated application to conditionally admit the prior recorded statements and related documents of various witnesses under rule 68 and Prosecution's application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of proceedings relating to the evidence of Witnesses P-0087 and P-0088", 6 June 2017, ICC-02/11-01/15-950 ("Decision no. 950").

14. The Single Judge considers it appropriate to consider the three issues together, as they all relate to the scope of the Impugned Decision. It is therefore appropriate to analyse them together in order to determine whether the Request cumulatively shows all requirements under Article 82(1)(d) of the Statute.
15. In its Request, although the Defence for Mr Gbagbo has expressed its disagreement with the Impugned Decision, it has mainly focused its arguments on previous decisions of the Chamber (namely Decision no. 405 and Decision no. 950). Accordingly, it has failed to show how the three identified issues arise of the Impugned Decision and are not mere re-litigation of past issues. In effect, all three issues reflect a misunderstanding of the scope of the Impugned Decision, which did not decide on the submission or admissibility of statements under Rule 68(2)(b) of the Rules (this was decided upon in Decision no. 950). The Impugned Decision dealt solely with the argument made by the Gbagbo Defence for an admissibility ruling of the declarations transmitted by the Registry. Accordingly, the Impugned Decision was limited to reiterate an evidentiary regime already established by the Chamber and authorised the submission of the discrete Registry declarations.
16. Moreover, because the factual issue to which the Impugned Decision relates is of limited impact it could not significantly affect the fair and expeditious conduct of the proceedings, much less the outcome of the trial. Accordingly, even if all three issues would be appealable, the Request also fails to meet all other requirements under Article 82(1)(d) of the Statute.

**FOR THE FOREGOING REASONS, THE SINGLE JUDGE, HEREBY  
REJECTS the Request.**



**Judge Cuno Tarfusser**

**Single Judge**

Dated 9 July 2018

At The Hague, The Netherlands