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**International
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TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

Prosecution's response to Blé Goudé's application for leave to appeal the decision on the Defence requests for clarification of that portion of the Joinder Decision relating to the review of the Gbagbo and Blé Goudé case records, and extension of time to conduct its review

Source: Office of the Prosecutor

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

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Introduction

1. The application for leave to appeal (“Application”),¹ filed by the Defence of Blé Goudé (“Blé Goudé Defence”) should be rejected. The issue raised in the Application does not arise from the Decision.

2. The Trial Chamber should also reject the Blé Goudé Defence’s additional requests asking the Trial Chamber to clarify the deadline for seeking leave to appeal and to file an addendum to the Application.² There is no need for the Trial Chamber to provide such clarification when the applicable law is clear that the deadline for filing a request for leave to appeal runs from notification of the reasons for a decision. In any event, given that the issue raised in the Application does not arise from the Decision, the filing of an addendum would be futile.

Background

3. On 11 March 2015, the Trial Chamber joined the Gbagbo and Blé Goudé cases (“Joinder Decision”).³ In that decision it ordered the Registry “to open a case record for the joint case and provide access to all parties and participants”.⁴ However, the Trial Chamber did not grant to any party or participant access to non-public material. Instead, it instructed the Parties, the Legal Representative of Victims (“LRV”) and the Registry to “indicate by 7 April 2015 any objection, and the reasons thereof, to any party or participant being granted access to any confidential document or material on either the Blé Goudé or Gbagbo case records”.⁵ It stated that it would “thereafter rule

¹ ICC-02/11-01/15-24.

² Application, pp.14-15.

³ ICC-02/11-02/11-222; ICC-02/11-01/11-810; ICC-02/11-01/15-1.

⁴ Joinder Decision, para.71.

⁵ Joinder Decision, para.73.

on these objections and on access to the parts of the joint case record for which no objection was made”.⁶

4. On 27 March 2015, the Defence of Laurent Gbagbo (“Gbagbo Defence”) filed a request for clarification of a portion of the Joinder Decision (“Request for Clarification”).⁷ In particular, it requested Trial Chamber to clarify the meaning of the expression “case record” as used in paragraphs 72 and 73 of the Joinder Decision. It also sought an extension of the 7 April 2015 time limit set in the Joinder Decision for filing any objections (“Request for Extension of Time”).⁸

5. On 2 April 2015, the Blé Goudé Defence joined the Request for Clarification and the Request for Extension of Time.⁹ It also requested the Trial Chamber to clarify the classification that the Defence should use when communicating a document to the Parties, or to one party only, but not to the participants.¹⁰

6. On the same day, the Trial Chamber issued a decision granting the Request for Extension of Time, but rejecting all other requests (“Decision”).¹¹ The Trial Chamber specified that it would provide reasons for rejecting these other requests in due course.

7. On 8 April 2015, the Blé Goudé Defence filed their Application on the following issue:¹²

“whether the Chamber erred in its ruling regarding the scope of the participants’ access to the *Gbagbo* and *Blé Goudé* case records when it found that the participants shall be granted access to every confidential document filed in the *Gbagbo* and the *Blé Goudé* pre-trial and trial case records whereas,

⁶ Joinder Decision, para.73.

⁷ ICC-02/11-01/15-14.

⁸ ICC-02/11-01/15-14.

⁹ ICC-02/11-01/15-20, para.3; pp.12-13.

¹⁰ ICC-02/11-01/15-20, p.13.

¹¹ Email of 2 April 2015, 16h11, sent to the parties and participants on behalf of the Trial Chamber.

¹² Application, para.28.

on the same day, it also seems to have found that the participants shall not have access to any confidential document filed in the *Gbagbo* pre-trial case record.”

8. In its Application, the Blé Goudé Defence also requests the Trial Chamber to clarify whether the deadline for seeking leave to appeal runs from the day of the Decision, or the day on which the reasons supporting the Decision have been served upon the Parties and participants. If the latter date applies, the Blé Goudé Defence further asks to file an addendum to the Application.¹³

Submissions

(i) *The application for leave to appeal should be rejected*

9. The Issue raised in the Application does not arise or “result” from the Decision of 2 April 2015.¹⁴

10. According to the Defence, the Trial Chamber erred by granting the participants access to non-public documents filed in the *Gbagbo* and *Blé Goudé* cases. However, in neither the Joinder Decision, nor the 2 April Decision has the Trial Chamber granted the Parties and participants access to non-public material in the *Gbagbo* and *Blé Goudé* case records.¹⁵

11. The Joinder Decision did not grant the Parties and participants access to non-public material. The Trial Chamber expressly stated that only after the Parties and participants have had an opportunity to raise any objections would it “rule on these objections and on access to the parts of the joint case record for which no objection

¹³ Application, pp.14-15.

¹⁴ *Contra*, Application, para.16.

¹⁵ *Ibid.*

was made”.¹⁶ Moreover, the Decision of 2 April 2015 merely extended the deadline for the Parties, the LRV and the Registrar to indicate any objections they had to the Parties or participants being granted access to such non-public material and rejected the Defence’s Requests for Clarification.¹⁷ As a result of the Decision, this deadline is now extended to 28 April 2015, after which the Trial Chamber will rule on whether to provide access to non-public material.

12. Further, any alleged inconsistency of the Joinder Decision with a decision in the *Gbagbo* case which did not give the LRV access to any other previously filed documents¹⁸ does not demonstrate that the Issue arises from the Decision.¹⁹

13. As a result, the Application for leave to appeal should be rejected.

(ii) The additional requests should be rejected

14. The Trial Chamber should also reject the Blé Goudé Defence’s additional requests seeking clarification of the deadline for filing an application for leave to appeal and to submit an addendum to the present Application.

15. There is no need for the Trial Chamber to clarify the deadline for seeking leave to appeal. According to regulation 31(5)(b) of the Regulations of the Court, the deadline for filing a request for leave to appeal in this case runs from notification of the reasons for a decision.²⁰ In any event, the Trial Chamber, like the Appeals Chamber,²¹ is not an advisory body to inform the Parties, upon request, of the applicable procedures.

¹⁶ Joinder Decision, para.73. See also para.3 above.

¹⁷ See paras.4-5 above.

¹⁸ ICC-02/11-01/11-809, para.18.

¹⁹ *Contra* Application, para.15.

²⁰ Although regulation 31(5)(b) expressly deals with prior oral decisions (and not a decision, like the present Decision which was communicated to the Parties and participants *via* email), it equally applies to the situation at hand, as the Trial Chamber has indicated that it will provide subsequent written reasons in support of its prior decision.

²¹ ICC-01/04-503 OA4 OA5 OA6, para.30; ICC-01/04-01/07-3132 OA12, para.7.

16. Finally, the filing of an addendum to this Application after the Chamber has provided its reasoning supporting the Decision would be futile. Although the Defence may provide additional arguments and address the reasons provided by the Trial Chamber in support of its Decision, an addendum cannot overcome the fact that the Issue alleged by the Blé Goudé Defence simply does not arise from the Decision of 2 April 2015. The above arguments on why this application for leave to appeal should be rejected would continue to hold force.

Conclusion

17. For the reasons above, the Application should be dismissed.



Fatou Bensouda, Prosecutor

Dated this 10th day of April 2015

At The Hague, The Netherlands