

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 10 April 2015

TRIAL CHAMBER I

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

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ***

Public Document

Response to the “Defence request for leave to appeal the “Decision on Defence requests for clarification of that portion of the Joinder Decision relating to review of the Gbagbo and Blé Goudé case records, and extension of time to conduct its review (ICC-02/11-01/15-14)””

Source: Office of Public Counsel for Victims

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

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Unrepresented Victims

**Unrepresented Applicants
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Other

I. PROCEDURAL BACKGROUND

1. On 11 March 2015, Trial Chamber I (the “Chamber”) decided *inter alia* to grant the Prosecution’s request to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé*, and ordered the parties, the LRV and the Registry to indicate by 7 April 2015 any objection to any party or participant being granted access to any confidential document or material on the *Blé Goudé* and *Gbagbo* case records (the “Joinder Decision”).¹

2. On 27 March 2015, the Defence of Mr. Gbagbo requested the clarification of the Joinder Decision and an extension of time to file the abovementioned objections (the “Clarification Request”).²

3. On 31 March 2015, the Chamber shortened the deadline to respond to the Clarification Request.³

4. On 2 April 2015, the Defence of Mr. Blé Goudé provided its response to the Clarification Request, making *inter alia* a similar request for clarification of the Joinder Decision and extension of time to submit its eventual objections to any party or participant being granted access to any confidential document or material on the *Blé Goudé* and *Gbagbo* case records.⁴

5. On the same date, the Chamber communicated via email its “Decision on Defence requests for clarification of that portion of the Joinder Decision relating to

¹ See 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” (Trial Chamber I), No. ICC-02/11-01/15-1, 11 March 2015 (the “Joinder Decision”).

² See the “Demande aux fins de clarification de la « Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters » rendue par la Chambre de première instance I le 11 mars 2015 (ICC-02/11-01/11-810)”, No. ICC-02/11-01/15-14, 27 March 2015 (the “Clarification Request”).

³ See the e-mail received from the Chamber on 31 March 16:36h.

⁴ See the “Defence response to the “Demande aux fins de clarification de la “Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters” rendue par la Chambre de première instance I le 11 mars 2015 (ICC-02/11-01/11-810)” and Request for clarification of the same decision”, No. ICC-02/11-01/15-20, 2 April 2015.

review of the Gbagbo and Blé Goudé case records, and extension of time to conduct its review (ICC-02/11-01/15-14)", informing the parties and participants of its decision to extend the deadline for filing any objection to granting any party or participant access to any 'confidential', 'confidential, *ex parte*', and 'under seal' material on the *Gbagbo* and *Blé Goudé* pre-trial and trial case records to 28 April 2015, and to reject all other requests (the "Decision").⁵

6. On 8 April 2015, the Defence of Mr. Blé Goudé requested the Chamber leave to appeal the Decision if the deadline for seeking said leave started to run from the date the Decision was communicated by email, and an authorisation to file an addendum to its request for leave to appeal if said deadline starts to run from the date the reasoning supporting the Decision becomes available (the "Request").⁶

7. On 10 April 2015, the Single Judge confirmed that the deadline for any request seeking leave to appeal runs from the date the parties are notified of the Chamber's reasons for its decision.⁷ On the same date, the Prosecution filed its response to the Request.⁸

8. Pursuant to regulation 24(2) of the Regulations of the Court, the Principal Counsel of the Office of Public Counsel for Victims, acting as Common Legal Representative of the victims admitted to participate in the proceedings (the "Common Legal Representative"),⁹ respectfully submits her response to the Request.

⁵ See the e-mail received from the Chamber on 2 April 2015 at 16:11h. The Chamber indicated that it would provide reasons for this decision "*in due course*".

⁶ See the "Defence request for leave to appeal the "Decision on Defence requests for clarification of that portion of the Joinder Decision relating to review of the Gbagbo and Blé Goudé case records, and extension of time to conduct its review (ICC-02/11-01/15-14)", No. ICC-02/11-01/15-24, 8 April 2015, pp. 14-15 (the "Request").

⁷ See the e-mail received from the Chamber on 10 April 2015 at 16:35h.

⁸ See the "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", No. ICC-02/11-01/15-28, 10 April 2015.

⁹ See the "Decision on victim participation" (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015, para. 61.

II. RESPONSE BY THE COMMON LEGAL REPRESENTATIVE

9. The Common Legal Representative contends that the Request is inadmissible in its entirety.

10. Concerning the first part of the Request, namely the request for leave to appeal the Decision,¹⁰ the Common Legal Representative submits that pursuant to rule 155(1) of the Rules of Procedure and Evidence, regulation 65(1) of the Regulations of the Court, and regulation 34(1) of the Regulations of the Registry, a request for leave to appeal under article 82(1)(d) of the Rome Statute cannot be filed without having knowledge of the reasons underpinning the decision for which leave to appeal is sought.

11. Rule 155(1) of the Rules of Procedure and Evidence provides that “[a] party [wishing to appeal a decision under article 82(1)(d)] *shall, within five days of being notified of that decision, make a written application to the Chamber*”. With regard to the “method of notification” of “documents, material, orders or decisions”, regulation 34(1) of the Regulations of the Registry stipulates that that they “[s]hall be notified as an email attachment”.¹¹ Furthermore, regulation 65(1) of the Regulations of the Court mandates that an application for leave to appeal under rule 155 of the Rules of Procedure and Evidence “[s]hall *specify the legal and/or factual reasons in support thereof*”.¹² The Common Legal Representative contends that in order for a request for leave to appeal to meet all these requirements, the reasons underpinning the decision for which appeal is sought must have been communicated to the party wishing to appeal.

¹⁰ See the Request, *supra* note 6, paras. 25-40.

¹¹ See Regulations of the Registry, regulation 34(1) (emphasis added).

¹² See Regulations of the Court, regulation 65(1). See also *idem*, regulation 65(2).

12. In the instant case, although the Chamber communicated the Decision to the parties and participants on 2 March 2015 via email,¹³ said communication i) did not provide any decision “*attached*”, as specifically required by regulation 34(1) of the Regulations of the Registry; ii) only contained the dispositive part of the decision; and iii) expressly indicated that “[t]he Chamber will provide reasons for this decision in due course”.¹⁴ The Common Legal Representative submits that no request for leave to appeal is possible on the basis of a communication with said content because the arguments made by the Chamber to reach the Decision were not provided.

13. In fact, after the filing of the Request, the Chamber clarified that the deadline for seeking leave to appeal against the Decision will start to run from the date the parties are notified of the Chamber’s reasons.¹⁵ Accordingly, the Common Legal Representative contends that the first part of the Request must be rejected *in limine*.

14. Concerning the second part of the Request, namely the request for an authorisation to file an “addendum” to the request for leave to appeal after the date when the reasoning supporting the Decision becomes available,¹⁶ the Common Legal Representative submits that said part of the Request must equally be dismissed since it is based on the understanding that the first part of the Request, namely the request for leave to appeal, is admissible.

15. However, as argued above, the request for leave to appeal must be dismissed *in limine* because it was filed before the Chamber provided the reasons for its Decision. As an inadmissible request, it is not possible to supplement it subsequently.

16. In these circumstances, the Common Legal Representative contends that the Request must be rejected in its entirety, with the Defence retaining the possibility to

¹³ See the Decision, *supra* note 5.

¹⁴ *Idem*.

¹⁵ See *supra* note 7.

¹⁶ See the Request, *supra* note 6, para. 13 and p. 15.

file a *complete* request for leave to appeal after the time limit for doing so starts to run, namely after the Chamber files its reasons for the Decision.

FOR THE FOREGOING REASONS, the Common Legal Representative requests the Chamber to reject the Request in its entirety.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 10th day of April 2015

At The Hague, The Netherlands