

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 April 2015

TRIAL CHAMBER I

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

**Decision on requests for clarification concerning review of the case record and
extension of time**

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**

Ms Paolina Massidda

**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

Trial Chamber I ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* ('Gbagbo and Blé Goudé case'), having regard to Articles 64(7) and 67(1) of the Rome Statute ('Statute'), Rules 121(10) and 131 of the Rules of Procedure and Evidence ('Rules'), Regulations 23bis and 35(2) of the Regulations of the Court ('Regulations') and Regulations 20, 21 and 22 of the Regulations of the Registry, issues the following 'Decision on requests for clarification concerning review of the case record and extension of time'.

I. Background and submissions

1. On 11 March 2015, the Chamber issued a decision ('Joinder Decision'), *inter alia*, granting requests by the Office of the Prosecutor ('Prosecution') to join the cases of *The Prosecutor v. Laurent Gbagbo* ('Gbagbo case') and *The Prosecutor v. Charles Blé Goudé* ('Blé Goudé case').¹ Consequently, the Chamber made the following orders relating to the *Gbagbo*, *Blé Goudé* and *Gbagbo and Blé Goudé* case records:²

71. Pursuant to Rule 131 of the Rules and Regulation 20 of the Regulations of the Registry, the Chamber orders the Registry to open a case record for the joint case and provide access to all parties and participants. The Chamber orders that this Decision be the first document on the joint case record. The *Gbagbo* and *Blé Goudé* case records should be closed with this Decision being the final document on both records.
72. Pursuant to Rules 121(10) and 131 of the Rules and Regulations 21 and 22 of the Regulations of the Registry, the Chamber orders that all public documents and other material on both the *Blé Goudé* and *Gbagbo* case records be included on the joint case record. All confidential, *ex parte* and under seal documents and other information on either case record will, for the time being, retain their current classification and will not be included on the joint case record.
73. The parties, LRV and Registry shall indicate by 7 April 2015 any objection, and the reasons therefore, to any party or participant being granted access to any confidential document or material on either the *Blé Goudé* or *Gbagbo* case records. The Chamber will

¹ Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters, with public Annex A, 11 March 2015, ICC-02/11-01/15-1 (see also ICC-02/11-01/11-810 and ICC-02/11-02/11-222).

² Joinder Decision, ICC-02/11-01/15-1, paras 71-73.

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

2. On 27 March 2015, the defence for Mr Gbagbo ('Gbagbo Defence') requested clarification of the term 'case record' ('Gbagbo Defence Request').³ It submits that the Joinder Decision is unclear as to whether the term 'case record' refers only to the record of proceedings before the Chamber or the record of the entire proceedings, and that this ambiguity impedes its ability to make objections concerning access.⁴ The Gbagbo Defence argues that, consistent with decisions of the Single Judge of the Chamber ('Single Judge') and Pre-Trial Chamber II, the term 'case record', as used in the Joinder Decision, should only refer to the record of proceedings before the Chamber.⁵ It also stresses the secondary role of the Legal Representative of Victims ('LRV') in the proceedings and requests clarification as to which classification should be used to provide access only to the parties.⁶ Finally, the Gbagbo Defence requests three additional weeks to complete its review of the case record, due to the importance and size of the task.⁷
3. On 1 April 2015, the Prosecution responded that it had no comments on that portion of the Gbagbo Defence Request seeking clarification.⁸ However, it submits that, '[f]or the purposes of completeness and in order to avoid mistakes, the Prosecution would benefit from any extension of the set deadline'.⁹

³ 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), 27 March 2015, ICC-02/11-01/15-14.

⁴ Gbagbo Defence Request, ICC-02/11-01/15-14, paras 21-24.

⁵ Gbagbo Defence Request, ICC-02/11-01/15-14, paras 29-35.

⁶ Gbagbo Defence Request, ICC-02/11-01/15-14, paras 5-13 and 27-28.

⁷ Gbagbo Defence Request, ICC-02/11-01/15-14, paras 25-26 and page 13.

⁸ Prosecution's response to Defence request for clarification and extension of time (ICC-02/11-01/15-14), 1 April 2015, ICC-02/11-01/15-18 ('Prosecution Response'), para. 2. On 31 March 2015, the Chamber had shortened the deadline for any response to the Gbagbo Defence Request to 2 April 2015 at 12:00. See Email communication from Legal Officer of the Trial Chamber to the parties and participants on 31 March 2015 at 16:36.

⁹ Prosecution Response, ICC-02/11-01/15-18, paras 2-5.

4. On 2 April 2015, the LRV also responded to the Gbagbo Defence Request.¹⁰ She submits that the request for clarification is inadmissible and unfounded because it has no legal basis, it reiterates submissions that were already considered and rejected by the Chamber, and the relevant portion of the Joinder Decision, consistent with the Chamber's other decisions, is clear and reasonable.¹¹ The LRV further submits that the request for guidance as to what classification should be used to notify the parties, but not the LRV, is redundant and unnecessary.¹² Finally, she argues that the request for extension of time is belated and unjustified, informing the Chamber of the 'displeasure and despair' experienced by some victims as a result of delaying tactics employed by the Defence.¹³

5. Also on 2 April 2015, the defence for Mr Blé Goudé ('Blé Goudé Defence'; together with the Gbagbo Defence, 'Defence') joined the Gbagbo Defence Request.¹⁴ It submits that, according to the established 'pattern' at the Court, the LRV is only given access to confidential information when the Chamber exceptionally decides, on a case-by-case basis, that such access is warranted.¹⁵ In making an exception to this 'pattern' and authorising LRV access to confidential material, the Blé Goudé Defence submits that the Chamber was acting prospectively and therefore requests clarification as to whether the term 'case record', as used in the Joinder Decision, refers to the record of pre-trial and/or trial proceedings.¹⁶ Claiming that, without this

¹⁰ Response of the Common Legal Representative 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)", 2 April 2015, ICC-02/11-01/15-19 ('LRV Response').

¹¹ LRV Response, ICC-02/11-01/15-19, paras 9-23.

¹² LRV Response, ICC-02/11-01/15-19, paras 9 and 24.

¹³ LRV Response, ICC-02/11-01/15-19, paras 9 and 25-29.

¹⁴ 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, 2 April 2015, ICC-01/11-01/15-20 ('Blé Goudé Defence Response').

¹⁵ Blé Goudé Defence Response, ICC-01/11-01/15-20, paras 14-22 and 32-33.

¹⁶ Blé Goudé Defence Response, ICC-01/11-01/15-20, paras 23-28 and 31.

clarification, it is difficult to make objections concerning access to the case record, the Blé Goudé Defence requests an extension of three weeks.¹⁷ Finally, it requests clarification as to the classification it should use in order to transmit material to the parties, but not the LRV.¹⁸

6. On 2 April 2015, the Chamber notified the parties by email of its decision, stating that the reasons therefor would follow in due course.¹⁹ On 8 April 2015, the Blé Goudé Defence, *inter alia*, requested clarification as to whether the deadline for seeking leave to appeal of the present decision runs from the date the Chamber provided the reasons for its decision.²⁰ On 10 April 2015, the Single Judge confirmed by email 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.²¹

II. Analysis

7. At the outset, the Chamber notes that both Defence teams allege ambiguity in the Joinder Decision which, they submit, has impeded their ability to abide by the Chamber's instructions relating to the *Gbagbo* and *Blé Goudé* case records. Yet, the *Gbagbo* Defence Request was filed more than two weeks after the Joinder Decision. The *Gbagbo* Defence does not provide any reason why it did not make its request sooner. In the exercise of reasonable diligence, the Chamber considers that the *Gbagbo* Defence Request could have been made in a timelier manner.

¹⁷ Blé Goudé Defence Response, ICC-01/11-01/15-20, para. 29 and page 13.

¹⁸ Blé Goudé Defence Response, ICC-01/11-01/15-20, para. 30.

¹⁹ Email communication from Legal Officer of the Trial Chamber to the parties and participants on 2 April 2015 at 16:11.

²⁰ 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)", ICC-02/11-01/15-24, 8 April 2015.

²¹ Email communication from Legal Office of the Trial Chamber to the parties and participants on 10 April 2015 at 16:35.

8. The Chamber further notes the Defence request for clarification as to the classification it should use to transmit material only to the parties and not the LRV. Considering Regulation 23*bis* of the Regulations and previous instructions by the Chamber and Single Judge in this regard,²² the Chamber finds that this request is without merit and will not be entertained further.
9. Turning to the request for clarification of the term 'case record', the Chamber recalls that, in relevant part, the Joinder Decision referred to Rules 121(10) and 131 of the Rules. These provisions concern the record of proceedings before the Pre-Trial Chamber and provide that, *inter alia*, the Prosecution, Defence and LRV may consult it, subject to any justified restrictions. The Joinder Decision also referred to Regulation 21 of the Regulations of the Registry, providing that a 'case record shall be a full and accurate record of all proceedings', thus referring to the entirety of the case record. The Chamber instructed the parties to indicate any objection to any party or participant being granted access to any confidential material on the *Gbagbo* and *Blé Goudé* case records. These instructions were clear.
10. Finally, in relation to the request for an extension of time, the Chamber notes the principle of publicity guaranteed by Articles 64(7) and 67(1) of the Statute, and that, pursuant to Regulation 23 *bis*(3) of the Regulations, material on the case record should retain its classification only so long as it is justified. The Chamber further considers that it is in the interests of justice and all parties that access to 'confidential', 'confidential, *ex parte*' and 'under seal' material is limited to a necessary and proportional extent. The Chamber must therefore ensure that the parties and participants have adequate time

²² See Transcript of hearing dated 4 November 2014, ICC-02/11-01/11-T-25-CONF-ENG CT, page 4, line 22 to page 5, line 7; Decision on the Legal Representative of Victims' access to certain confidential filings and to the case record, 19 January 2015, ICC-02/11-01/11-749, paras 15 and 20; Transcript of hearing dated 13 February 2015, ICC-02/11-02/11-T-9-CONF-ENG ET, page 6, lines 5-13; *see also* Decision on Defence's requests seeking leave to appeal the 'Decision on the Legal Representative of Victims' access to certain confidential filings and to the case record' and seeking suspensive effect of it, 11 March 2015, ICC-02/11-01/11-809, paras 18, 23 and 33.

to review, and make reasoned submissions on access to, 'confidential', 'confidential, *ex parte*' and 'under seal' material on the *Blé Goudé* and *Gbagbo* case records. In this regard, both Defence teams and the Prosecution indicate that an extension of time would facilitate a thorough and accurate review. Both Defence teams request an extension of three weeks, which the Prosecution does not oppose.

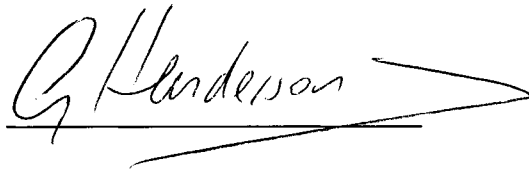
11. Pursuant to Regulation 35(2) of the Regulations, the Chamber therefore considers that there is good cause to extend by three weeks the deadline for the parties, LRV and Registry to indicate any objection, and the reasons therefore, to any party or participant (including the LRV) being granted access to any 'confidential', 'confidential, *ex parte*' or 'under seal' material on the *Gbagbo* and *Blé Goudé* pre-trial and trial case records.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS the parties, LRV and Registry to make any objections in accordance with paragraph 73 of the Joinder Decision and paragraph 11 above by 28 April 2015; and

REJECTS all other requests.

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

A handwritten signature in black ink, appearing to read 'G. Henderson', written over a horizontal line.

Judge Geoffrey Henderson, Presiding Judge

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Judge Olga Herrera Carbuccion

A handwritten signature in black ink, appearing to read 'Bertram', written over a horizontal line.

Judge Bertram Schmitt

Dated 13 April 2015

At The Hague, The Netherlands