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TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Cuno Tarfusser
Judge Olga Herrera-Carbuccia

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

Public

Prosecution's consolidated response to the Defence Request for Leave to Appeal the "Decision on the Legal Representative of Victims' access to certain confidential filings and to the case record" and to the Defence Request "*en suspension, à titre conservatoire, des effets de la décision du Juge unique du 19 janvier 2015 (ICC-02/11-01/11-749)*"

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Introduction

1. The Defence's request for leave to appeal ("Application")¹ the "Decision on the Legal Representative of Victims' access to certain confidential filings and to the case record" ("Decision")² should be rejected. None of the eight alleged issues ("Issues") raised by the Defence constitute appealable "issues" within the terms of article 82(1)(d) of the Rome Statute ("Statute"), nor do they arise from the Decision. Many of them constitute mere disagreements with the Decision, and represent the Defence's conflicting opinions and continued insistence on particular positions—despite ample indication to the contrary. Moreover, the Issues do not meet the criteria for leave to appeal.

2. Equally, the Defence request for suspensive effect of the Decision³ is unfounded and should be dismissed.

Submissions

I. Response to the Application for Leave to Appeal

3. The Appeals Chamber has ruled that "only an issue may form the subject-matter of an appealable decision. [...] An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination."⁴ Mere disagreements or conflicting opinions are not appealable.⁵ None of the Issues identified by the Defence meet this test.

¹ ICC-02/11-01/11-752.

² ICC-02/11-01/11-749.

³ ICC-02/11-01/11-753 ("Request" or "Request for Suspensive Effect").

⁴ ICC-01/04-168 OA3, para.9; ICC-02/04-01/05-367, para.22; ICC-02/05-02/09-267, p.6; ICC-01/04-01/06-2463, para.8; ICC-01/09-02/11-27, para.7. See also, ICC-01/04-01/06-1433 OA11 (Dissenting Opinion of Judge Song), para.4, specifying that "[a] decision 'involves' an issue if the question of law or fact constituting the issue was essential for the determination or ruling that was made."

⁵ ICC-01/04-168 OA3, para.9.

(a) The First Issue is not appealable and does not arise from the Decision

4. The First Issue—namely, whether the Single Judge, instead of the Trial Chamber, could decide to provide the Legal Representative of Victims (“LRV”) with access to the documents⁶—is not appealable. It concerns a routine trial management issue unrelated to the Decision’s subject matter, and as such is not “a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination.” To the extent that the First Issue relates to the LRV’s access to the six listed documents, it does not also arise from this Decision, but, at least in part, from an earlier decision by the Single Judge on 20 November 2014.⁷

5. Firstly, the Issue is based on an incomplete review and misunderstanding of the statutory framework. As the sole support for its argument, the Defence relies on rule 132bis(6) of the Rules of Procedure and Evidence (“Rules”).⁸ It neglects review of the remainder of rule 132bis, which lists out the areas of the Single Judge’s competence in a non-exhaustive manner. Indeed, as rule 132bis(2) states, a Single Judge “shall take all necessary preparatory measures in order to facilitate the fair and expeditious conduct of the trial proceedings, in consultation with the Trial Chamber.”⁹ Further, the Single Judge is competent to decide preparatory issues including “ensuring proper disclosure between the parties”, “dealing with applications by victims for participation in the trial, as referred to in article 68, paragraph 3” and “dealing with *any other preparatory matters* that must be resolved which do not otherwise fall within the exclusive competence of the Trial Chamber.”¹⁰ Granting the LRV access to certain confidential documents is one such preparatory issue relating to routine trial management that the Single Judge is competent to decide upon. In any event, rule 132bis(2) makes clear that the Single Judge takes these preparatory measures *in consultation with the Trial Chamber* (emphasis added). The Application fails to acknowledge the existence of any of these relevant provisions.

⁶ Application, paras.14-17.

⁷ ICC-02/11-01/11-724 (“Decision of 20 November 2014”).

⁸ Application, para.15.

⁹ Rule 132bis(2).

¹⁰ Rules 132bis(5)(a), 5(c) and 5(g) (emphasis added).

6. Further, although the Application references rule 132*bis*(6), it fails to elaborate how the Decision “significantly affects the rights of the accused.” Apart from its claim that “*cette décision est susceptible d’attenter à l’équité de la procédure en ce qu’elle constitue une nouvelle partie dans la procédure aux côtes de l’Accusation et de la Défense*”,¹¹ it offers no further justification. Such unsupported assertions can neither advance claims of an appealable issue, nor do they show any impact on the fairness of the proceedings. Its submission that the Decision “redefines” victims’ rights is similarly unsubstantiated in the context of the First Issue.¹² Contrary to the Defence argument,¹³ the Single Judge’s approach has previously been adopted by several Trial Chambers as a routine trial management issue.¹⁴ The Decision does not suggest anything new.

7. Secondly, the Single Judge’s competence to allow the LRV access to the listed documents first arose in the Decision of 20 November 2014. There, the Single Judge directed the Registry to notify the documents in question to the LRV, “unless the Prosecution and the Defence provide reasons for the chosen classification pursuant to Regulation 23*bis* of the Regulations[...].”¹⁵ The Decision in question is only a follow up to the Decision of 20 November 2014, upon receiving the parties’ observations. As such, the Single Judge’s competence to allow the LRV access to the six confidential documents does not arise from this Decision.

8. For these reasons, the First Issue should be dismissed.

(b) The Second Issue does not arise from the Decision and is not appealable

9. The Second Issue—whether the Single Judge erred in allowing the LRV access to confidential documents when the Rules explicitly state that the victims’ right of access is limited by confidentiality¹⁶—does not arise from the Decision. Nor does it

¹¹ Application, para.16.

¹² Application, para.16.

¹³ *Contra* Application, paras.8-10.

¹⁴ ICC-01/09-01/11-460 (“*Ruto Decision*”), paras.64-69; ICC-01/09-02/11-498 (“*Kenyatta Decision*”, paras.63-68; ICC-01/04-01/07-1788-tENG (“*Katanga Decision*”), paras.118-123; ICC-01/04-01/06-1119 (“*Lubanga Decision*”), paras.105-107; ICC-01/05-01/08-807-Corr (“*Bemba Decision*”), para.47.

¹⁵ Decision of 20 November 2014, p.4.

¹⁶ Application, para.18-25.

raise any appealable issue. Yet again, the Defence fails to properly acknowledge the law the Decision relies on, and misunderstands the relevant statutory provisions governing victims' access to confidential documents.

10. Contrary to its claim that “[i]l n'existe [...] pas de base légale à la décision de principe prise par le Juge Unique”,¹⁷ the very statutory provisions the Decision references (rules 131(2) and 92(5))—and the Defence acknowledges—provide the legal basis. Indeed, rule 131(2) allows the victims or their legal representatives participating in the proceedings pursuant to rules 89 to 91 access to the record “subject to any restrictions concerning confidentiality and the protection of national security information”.¹⁸ The Defence wrongly appears to suggest that the phrase “subject to any restrictions concerning confidentiality” implies that the LRV can never access confidential material. This cannot be—as a matter of logic.

11. Likewise, the Application wrongly interprets rule 92(5). While it claims that rule 92(5) does not accord victims access to the documents of the parties,¹⁹ the plain statutory text shows otherwise. It provides specifically that participating victims and their legal representatives shall be notified of *inter alia* “[r]equests, submissions, motions and other documents relating to such requests, submissions or motions.”²⁰ It remains unclear from the Application why documents emanating from the parties would not be covered by this formulation.²¹ Neither does the Defence explain this in any detail. As shown above, rule 92(5)—along with rule 131(2)—has been consistently used to grant victims access to confidential material on the record.²²

12. For the same reason, contrary to the Defence claim, the Decision's reliance on these statutory provisions does not constitute “une nouvelle approche”.²³ The issue of the LRV's access to the confidential documents of the case record is not new to this

¹⁷ Application, para.25.

¹⁸ Rule 131(2). See Decision, para.15.

¹⁹ Application, para.22.

²⁰ Rule 92(5)(b).

²¹ *But see* paras.15-17.

²² See *Ruto* Decision, paras.64-69; *Kenyatta* Decision, paras.63-68; *Katanga* Decision, paras.118-123. *But see* paras.15-17.

²³ Application, para.19.

Court.²⁴ Further, the Defence only speculates that the Decision held generally that the principle of “personal interests” no longer determined the question of access.²⁵ Given that the Decision clearly references case law articulating this principle,²⁶ the Defence submission is wrong. The Defence only partially references the *Lubanga* Decision: contrary to the Defence submission,²⁷ that decision recognised *inter alia* that victims could access confidential filings of material relevant to their personal interests.²⁸

13. In sum, the Second Issue rests on a skewed, speculative and unsupported interpretation of this Court’s statutory provisions and law. It does not therefore arise from the Decision. Additionally, the Defence in essence disagrees with the Court’s statutory text and practice. But mere disagreement, and offering alternative interpretations contrary to established interpretation, does not amount to an appealable issue.

14. For these reasons, the Second Issue should be dismissed.

(c) The Third Issue does not arise from the Decision

15. The Third Issue—namely, whether the Single Judge erred in allowing the LRV access to “*inter-partes* rule 77 documents not accessible by e-Court”²⁹—does not arise from the Decision. The Issue identified by the Defence is more apparent than real. The Decision did not grant the LRV access to any *inter-partes* documents or material, including rule 77 documents. Rule 77 documents are not part of the record of the case. Although it may appear that the term “Ringtail” used in the Decision is ambiguous, in fact, the Prosecution understands that the Decision only grants the LRV access to E-Court. The Prosecution wishes to clarify that it understands the reference to “Ringtail” in paragraphs 15 and 20 of the Decision to mean “E-Court” —

²⁴ *Contra* Application, para.19.

²⁵ Application, para.19.

²⁶ Decision, para.15, citing to *Ruto* Decision, para.67; *Kenyatta* Decision, para.66.

²⁷ Application, para.24.

²⁸ *Lubanga* Decision, paras.106-107. *But see* paras.15-17.

²⁹ Application, paras.26-29.

and not the parties' own Ringtail.³⁰ To the extent that the Decision relies on case law from other Chambers, the Prosecution understands those references similarly.³¹ As E-Court contains the record of the case, the Single Judge provided the LRV access to it under rules 92(5) and 131(2). Therefore, the Issue does not arise from the Decision because the LRV was not granted access in the terms the Issue suggests. The Defence arguments in that respect must therefore fail.³²

16. If ever documents relevant to rule 77 disclosures were to be uploaded to E-Court—which is not currently the case—they then become part of the record. The Defence's apparent suggestion that rule 77 documents are limited to its use³³ is therefore both premature and incorrect. Moreover, to the extent that this relates to the Office of the Prosecutor's ("Prosecution") own documents listed,³⁴ the Prosecution—as the filing party—had no objection to the LRV's access to the three documents—as the Single Judge has already recognised.³⁵ This is not a matter for the Defence to determine.

17. For these reasons, the Third Issue should be dismissed.

(d) The Fourth Issue does not arise from the Decision and is not appealable

18. The Fourth Issue, as to whether the Single Judge erred in providing the LRV access without considering the "personal interests" of the victims, does not arise from the Decision. The Application fails to read the Decision—and the supporting case law—as a whole.

19. Contrary to the Defence argument,³⁶ the Single Judge in effect considered if providing the LRV access was in the victims' interests, *i.e.*, it would allow for their

³⁰ Ringtail is a software. The parties have their own Ringtail evidence databases. The Chamber has access to the evidence of the parties via E-Court which uses the Ringtail software.

³¹ See for example, *Ruto* Decision, para.69; *Kenyatta* Decision, para.68; *Katanga* Decision, paras.122-123. Note in particular the *Katanga* Chamber's reference to "[...] the Ringtail system, which is maintained by the Registry and accessible to the Chamber" (para.123).

³² Application, paras.26-27.

³³ Application, para.29.

³⁴ Decision, paras.4-5,12-13,16.

³⁵ Decision, para.12.

³⁶ Application, paras.30-32.

effective participation.³⁷ Firstly, the Decision carefully references prior case law, including the *Ruto* Decision, which allowed the Common Legal Representative access to confidential filings, to the extent that their content is relevant to the victims' personal interests, and to allow meaningful victim participation.³⁸ The Single Judge was therefore fully aware of this consideration. He then in effect assessed that it was in the victims' interests for the LRV to have access to the case record including confidential filings. In his view, that would ensure effective victims' participation.³⁹ Although paragraph 15 of the Decision does not expressly use the term "personal interests", the Single Judge in fact conducted the very same assessment as the trial practice he relies on. Equally, the Single Judge considered that the LRV had a general right of access to and timely notification of the record under rules 131(2) and 92(5).⁴⁰ Secondly, by limiting access to the LRV at this stage, the Single Judge deferred the assessment of each individual victim's interests to a time when the victim should request access.⁴¹ Given that individual victims had not yet sought access, no individual determinations were necessary at this stage. The Defence continues to disagree with the practice of various Trial Chambers, but such conflicting opinions are not appealable.

20. For these reasons, the Fourth Issue should be dismissed.

(e) The Fifth Issue does not arise from the Decision and is not appealable

21. As its Fifth Issue, the Defence claims that the Single Judge erred in artificially differentiating between the LRV and the victims. It argues, generally, that the Judge misinterpreted the statutory role and function of the LRV.⁴² However, this Fifth Issue does not arise from the Decision. Additionally, it is a mere disagreement with the existing law and practice reflected in the Decision, and thus is not appealable.

³⁷ Decision, paras.15, 20, fn.21.

³⁸ See Decision, para.15, citing *Ruto* Decision, para.67; *Kenyatta* Decision, para.66.

³⁹ Decision, paras.15, 20, fn.21.

⁴⁰ Decision, paras.15, 20.

⁴¹ Decision, para.15.

⁴² Application, paras.34-36.

22. Firstly, the Defence wrongly compares the relationship between the Defence and the accused, and the LRV and the victims.⁴³ The former is a party to the proceedings, the latter—as the Decision recognised⁴⁴—is a participant. Therefore its effort to argue that the Decision created a “false dichotomy” between the LRV and the victims⁴⁵ on this basis is without merit, because its starting premise is incorrect.

23. Secondly, at this Court, confidential information is routinely limited only to the LRV and to the Office of Public Counsel for Victims (“OPCV”).⁴⁶ As the Decision notes, the LRV is bound by the Code of Professional Conduct for counsel.⁴⁷ Accordingly, the LRV—similar to *inter alia* defence counsel—is expected to respect and actively exercise all care to ensure respect for professional secrecy and the confidentiality of information in accordance with the Statute, the Rules and the Regulations of the Court.⁴⁸ The LRV may only disclose such information where *inter alia* such disclosure is ordered by the Court.⁴⁹ On this basis, the Single Judge directed that the victims’ access to the case record was limited to the LRV only. All further requests for access by individual victims must be approved on a case by case basis.⁵⁰ Merely because the Defence disagrees with this practice, and in effect the Decision, does not make this appealable. Conflicting opinions do not warrant leave to appeal.

24. For these reasons, the Fifth Issue should be dismissed.

(f) The Sixth Issue does not arise from the Decision and is not appealable

25. The Defence’s Sixth Issue is barely expressed. In a single sentence, the Defence appears to claim that the Single Judge erred in artificially distinguishing between the LRV and the other representatives of victims, contrary to the Statute and logic.⁵¹ No further elaboration of the matter, nor attempt to meet the article 82(1)(d) criteria is

⁴³ Application, para.36.

⁴⁴ Decision, para.15.

⁴⁵ Application, para.36.

⁴⁶ See *Ruto* Decision, paras.68-69; *Kenyatta* Decision, paras. 67-68; *Katanga* Decision, para.123.

⁴⁷ Decision, paras.19,22. See also Article 1, Code of Professional Conduct for counsel.

⁴⁸ Article 8(1), Code of Professional Conduct for counsel.

⁴⁹ Article 8(4), Code of Professional Conduct for counsel.

⁵⁰ Decision, para.15.

⁵¹ Application, para.37.

made. Such unsubstantiated submissions should not be entertained, and should be dismissed *in limine*.

26. In any event, this alleged Issue does not arise from the Decision. The Decision only concerns the LRV, and does not refer to any “other representatives of victims”. Further, the Defence submission fails to identify any particular finding that may be relevant to this Issue. It is therefore purely based on conjecture, and raises only hypothetical questions. This cannot constitute an identifiable subject essential for the determination of the matter (an appealable issue).

27. For these reasons, the Sixth Issue should be dismissed.

(g) The Seventh Issue does not arise from the Decision and is not appealable

28. As its Seventh Issue, the Defence argues that the Single Judge erred in abolishing the difference between the parties and the LRV in effect.⁵² The Seventh Issue does not arise from the Decision because the Defence misreads it. Further, it is a mere continued disagreement with the Single Judge’s findings, and therefore not appealable.

29. The Defence wrongly claims that the Decision considered the LRV as a party to the proceedings.⁵³ The Single Judge did not do that. Instead, the Decision states “[t]hough the victims are not parties to the proceedings, they are participants who are expressly entitled to be notified by the Registrar in a timely manner of, among other things, requests, submissions, motions and documents that form part of the proceedings.”⁵⁴ The Single Judge clearly recognised the victims’ role as participants, and not parties. The Seventh Issue does not refer to this finding. Because it misreads the Decision, the Seventh Issue is flawed and does not arise from the Decision.

⁵² Application, paras.38-40.

⁵³ Application, para.38.

⁵⁴ Decision, para.15.

Moreover, as submitted in response to the Third Issue,⁵⁵ the LRV was not granted access in the terms the Defence suggests.

30. In addition, the Seventh Issue continues to disagree with the Single Judge's finding rejecting the Defence position that the victims are third parties.⁵⁶ It also apparently disagrees with the understanding of "*ex parte*" classifications.⁵⁷ Such disagreements or conflicting opinions are not appealable.

31. For these reasons, the Seventh Issue should be dismissed.

(h) The Eighth Issue does not arise from the Decision and is not appealable

32. As its Eighth Issue, the Defence claims that the Single Judge erred by allowing the LRV access to documents covered by medical secrecy and privacy without the person's consent.⁵⁸ The Eighth Issue does not arise from the Decision, because it appears to erroneously assume that the Decision by granting the LRV confidential access in effect allowed all victims such access.⁵⁹ It is also not appealable because it only disagrees with the Decision, often without substantiation.

33. The Decision did not grant all victims access to confidential medical documents. As the Decision states in plain terms, access to any documents (including those related to medical issues) is restricted to the LRV alone. Individual victims may be granted access only on a case-by-case basis, when the Single Judge approves.⁶⁰ As such, and because the LRV is equally bound by the dictates of confidentiality, the Decision does not raise any purported issues of violations of medical secrecy and privacy.⁶¹ The Application misunderstands the Single Judge's finding and so, this Issue does not arise from the Decision.

⁵⁵ See paras.15-17.

⁵⁶ Application, para.39.

⁵⁷ Application, paras.38-39.

⁵⁸ Application, paras.41-47.

⁵⁹ *Contra* Application, para.43.

⁶⁰ Decision, paras.15, 19-21, fn.21.

⁶¹ Decision, para.22.

34. Equally, the Defence disagrees with the Single Judge's findings on ICC-02/11-01/11-697-Conf (a document containing certain medical information).⁶² This disagreement and conflicting opinion is not appealable.⁶³ In any event, the Defence's disagreement is unfounded. Firstly, it incorrectly claims that the Single Judge did not verify if the medical information contained in ICC-02/11-01/11-697-Conf was already made public.⁶⁴ However, in footnote 22 of the Decision, the Single Judge provides, by way of example, no less than four filings where such information was made public.⁶⁵ Thus, the Single Judge's finding that public decisions of Pre-Trial Chamber I and public Defence filings already revealed much of the redacted medical information in ICC-02/11-01/11-697-Conf was well supported and verified. Indeed, the medical information contained in ICC-02/11-01/11-697-Conf is already available in the public domain.⁶⁶ Accordingly, any argument that the Defence may have on the purported violation of medical secrecy is both wrong and without impact.

35. Secondly, the Defence incorrectly claims that the Single Judge could not rely on the Pre-Trial Chamber's Decision on Mr Gbagbo's fitness to take part in the Court's proceedings (ICC-02/11-01/11-286-Red) as "precedent" to allow the LRV access to the medical information. It claims, without support, that "experts" had advised the Court that the content of medical reports should not be disclosed to third parties.⁶⁷ This argument is flawed. While it is unclear from the Application which particular expert view it refers to, no matter that, the LRV is not a "third party". The Defence's challenge to the Single Judge's use of this Pre-Trial Chamber decision is thus wrong. In any case, the Defence does not find fault with the Single Judge's reliance on the three other public filings—all of which reveal to the public at large the allegedly confidential information the Defence now seeks to shield from the LRV.

⁶² Application, paras.43-47.

⁶³ ICC-01/04-168 OA3, para.9.

⁶⁴ Application, para.45.

⁶⁵ See Decision, para.21, fn.22.

⁶⁶ Compare for example, ICC-02/11-01/11-697-Conf, para.42 with ICC-02/11-01/11-286-Red, paras. 28, 36, 66, 67, 72-73, 75-77, 88; ICC-02/11-01/11-291, paras.26, 49, 52 ; ICC-02/11-01/11-355, para.2; ICC-02/11-01/11-368, para.7.

⁶⁷ Application, para.46.

36. Thirdly, the Defence seems to argue on principle that medical, private information of the accused, and that covered by professional secrecy, should be restricted from the victims.⁶⁸ This submission lacks any further detail. Moreover, purely hypothetical questions, not grounded in the Decision, are not appealable. It is not an identifiable subject or topic requiring a decision for resolution.⁶⁹

37. For these reasons, the Eighth Issue should be dismissed.

(i) *The Application fails to meet the article 82(1)(d) criteria for leave to appeal*

38. The Defence fails to demonstrate that the eight alleged Issues have any impact on the fairness of the proceedings. It wrongly assumes that the Single Judge effectively treated the victims as parties.⁷⁰ As shown above,⁷¹ the Decision does not support such a reading. Likewise, as also demonstrated,⁷² the Single Judge considered the victims' interests. Additionally, the Defence seems to claim unfairness because it will be required to use its time and resources to "*préparer des soumissions sur ces questions*."⁷³ Preparing relevant submissions is an expected and routine part of counsel's workload, it cannot affect the fairness of the proceedings in any manner. The Defence further speculates that giving the LRV access will allow her to develop strategies based on documents not used by the parties.⁷⁴ Without any concrete references on how this may be so, this assertion remains hypothetical and hence unfounded.⁷⁵ Moreover, that the LRV fulfils her statutory role cannot impact the fairness of the proceedings in any manner.

39. In any case, the Decision built in ample safeguards to the LRV's access. First, any access to the listed documents, and to the case record, was limited to the LRV. Individual victims can only access the record when specifically approved by the

⁶⁸ Application, para.47.

⁶⁹ ICC-01/04-168 OA3, para.9.

⁷⁰ Application, para.48.

⁷¹ See paras.28-31.

⁷² See paras.18-20.

⁷³ Application, para.49.

⁷⁴ Application, para.50.

⁷⁵ See paras.15-17. The Decision did not grant the LRV access to any *inter-partes* material.

Single Judge on a case by case basis. Second, the LRV continues to be bound by the Code of Professional Conduct for counsel *vis-à-vis* confidential information. Third, the parties continue to retain the opportunity to classify particular filings as confidential and *ex parte* if they are of the view that the LRV should not access them.⁷⁶

40. The Defence argument on the impact on expedition of proceedings is also without merit.⁷⁷ That there may be several or numerous applications to participate from individual victims cannot, at this stage, be a reason to grant leave to appeal. The Defence's concern is hypothetical and speculative. The Defence does not argue any purported impact on the outcome of the proceedings.

41. The Defence claims that appellate intervention is required to harmonise the approaches of different Chambers, to correct the trial of error, and to protect defence strategy from the victims.⁷⁸ However, as shown above, since all the Issues result from a misreading of the Decision in whole or in part, the Appeals Chamber is not required to correct a party's misunderstanding. Neither is the Appeals Chamber an advisory body on purely hypothetical matters.⁷⁹ The Application fails to demonstrate why the Appeals Chamber would be required, at this stage, to reinterpret the clear statutory framework, or compensate for any failure to acknowledge existing law or practice.

42. For all these reasons, the Defence fails to meet the criteria for leave to appeal.

II. Response to the Request for Suspensive Effect of the Decision

43. The Defence request for "suspensive effect" of the Decision⁸⁰ is unfounded. As the LRV has correctly noted,⁸¹ the Court's statutory framework does not permit requests for suspensive effect before Trial Chambers. Only the Appeals Chamber may

⁷⁶ Decision, para.15.

⁷⁷ Application, paras.51-53.

⁷⁸ Application, paras.54-57.

⁷⁹ ICC-01/04-503 OA4 OA5 OA6, para.30.

⁸⁰ ICC-02/11-01/11-753 ("Request" or "Request for Suspensive Effect").

⁸¹ ICC-02/11-01/11-754, paras.8-10, 14.

entertain such requests once it is seised of an appeal, pursuant to article 82(3).⁸² The Defence request for suspensive effect before the Trial Chamber therefore fails.

44. Even if the Request were read as a request to stay the Decision, it remains unfounded. The Trial Chamber should not stay the Decision as the Application—the effect of which the Defence seeks to preserve—is equally without merit. As demonstrated above, the Application is based on a wrong reading of the Decision and speculation.⁸³ Moreover, as the effect of the Decision is limited to the LRV alone, there is no prejudice whatsoever.

Conclusion

45. The Defence neither demonstrates that the Issues are appealable, nor that they meet the standard for leave to appeal under article 82(1)(d). For this reason, the Application should be dismissed.

46. As the Request for Suspensive Effect is unfounded in law and fact, it should be dismissed.



Fatou Bensouda, Prosecutor

Dated this 30th day of January 2015

At The Hague, The Netherlands

⁸² See e.g. Statute, article 82(3); ICC-01/04-01/10-469, p.5.

⁸³ See paras.15-17. The Decision did not grant the LRV access to any *inter-partes* material.