

**Cour
Pénale
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**International
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Court**

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Date: **30 June 2014**

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

***IN THE CASE OF
THE PROSECUTOR v. LAURENT GBAGBO***

Public

**Prosecution's Response to Defence Application for Leave to Appeal the
Single Judge's Decision of 19 June 2014 on disclosure in a related proceeding**

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 Defence request for leave to appeal¹ the Single Judge's Decision of 19 June 2014² is out of time, and should be dismissed on that basis alone. Further, as the Application itself acknowledges,³ many of the issues relating to the disclosure of confidential Defence documents are moot in light of the Prosecution's completed disclosure of these documents to the Defence for Charles Blé Goudé⁴ pursuant to the Decision.⁵ The remaining issues relating to the potential disclosure of medical documents do not arise from the Decision. Since the issues identified in the Application are not appealable, the further criteria for granting leave to appeal under Article 82(1)(d) need not be addressed.

Submissions

(a) The Application is out of time

2. The Single Judge issued the Decision on 19 June 2014, and it was notified on the same date to the parties pursuant to Regulations 31 and 33 of the Regulations of the Court.⁶ According to Rule 155 of the Rules of Procedure and Evidence, any application for leave to appeal the Decision was due on 25 June 2014 by 4 p.m. The Defence filed the Application on 25 June 2014 at 5.08 p.m.⁷
3. The Prosecution objects to the Defence's non-compliance with the prescribed time limits and the late filing of the Application. Indeed, the Appeals Chamber has reiterated the need to abide by such time limits and that failure to comply with

¹ ICC-02/11-01/11-660-Conf ("Application"). The Defence also filed corrigenda to its Application (ICC-02/11-01/11-660-Conf-Corr, ICC-02/11-01/11-660-Corr-Red ("Corrigendum") and ICC-02/11-01/11-660-Conf-Corr-Anx). Regardless of whether these documents constitute properly filed corrigenda (see ICC-01/05-01/08-631-Red OA2, 2 December 2009, para.38; ICC-01/04-01/07-3424 OA14, 20 January 2014, para.15), the Prosecution maintains that the Application should be dismissed.

² ICC-02/11-01/11-659 ("Decision").

³ See Corrigendum, paras.4, 28.

⁴ ICC-02/11-02/11-91 and ICC-02/11-02/11-91-Conf-AnxA ("Prosecution Disclosure").

⁵ Decision, para.8 and Disposition.

⁶ Email of 19 June 2014 from CMS, indicating Reception Date and Hour as 19/06/2014, 15.26 and Notification Date as 19/06/2014.

⁷ Email of 26 June 2014 from CMS, indicating Reception Date and Hour as 25/06/2014, 17.08 and Notification Date as 26/06/2014.

time limits may result in the rejection of the filing.⁸ Accordingly, the Application should be dismissed on this basis alone.

(b) The Application relating to the disclosure of confidential Defence documents is moot

4. The Defence challenges the portions of the Decision that relate to the disclosure of two categories of documents to third parties, in particular to the Charles Blé Goudé Defence, namely (a) confidential documents belonging to the Defence for Mr. Gbagbo; and (b) medical documents.⁹ In this regard, the Application purports to raise 10 appealable issues.
5. Eight of the 10 issues relate to the disclosure of confidential Defence documents.¹⁰ These issues are rendered moot because the Prosecution has already disclosed these documents to the Charles Blé Goudé Defence on 25 June 2014.¹¹ Indeed, pursuant to the Single Judge's authorisation¹² and following the expiry of the time limit for the filing of any potential application for leave to appeal against the Decision, the Prosecution disclosed these documents to the Defence for Charles Blé Goudé with the same confidentiality level and protective measures that are applicable in the case against Mr. Gbagbo.
6. Because the Prosecution has already implemented this portion of the Decision, the Appeals Chamber cannot grant any relief in an appeal against the Decision. As a result, Issues 1,¹³ 2,¹⁴ 3,¹⁵ 4,¹⁶ 6,¹⁷ 7,¹⁸ 9¹⁹ and 10²⁰ are moot to the extent that

⁸ See ICC-01/04-01/07-522 OA3, 27 May 2008, para.13, stating "[t]he Appeals Chamber would, however, emphasise to participants the importance of complying with the deadlines prescribed in the relevant legal texts [...] participants are reminded that failure to comply with prescribed time-limits may otherwise entail rejection of a document filed late." ICC-01/04-01/07-776 OA7, 26 November 2008, para.9, stating "[t]he participants are nevertheless reminded that failure to comply with time-limits may entail the rejection of a document that is filed late."

⁹ Corrigendum, para.17 and p.19.

¹⁰ Corrigendum, paras.29-31(issue 1), 32-35(issue 2), 36-39(issue 3), 40-49(issue 4), 54-55 (issue 6), 56-59(issue 7), 73-78(issue 9), 79-83(issue 10).

¹¹ Prosecution Disclosure.

¹² Decision, para.8 and Disposition.

¹³ Corrigendum, paras. 29-31.

¹⁴ Corrigendum, paras.32-35.

¹⁵ Corrigendum, paras.36-39.

¹⁶ Corrigendum, paras.40-49.

they relate to the disclosure of confidential Defence documents other than the medical documents. Equally, the Defence request for interim measures preventing disclosure until the Pre-Trial Chamber has decided on the present Application²¹ is also moot.

(c) The Issues relating to the disclosure of the medical documents do not arise from the Decision

7. Issues 5,²² 8²³ and 9²⁴ relate to the disclosure of the medical documents. These issues do not arise from this Decision and accordingly granting leave to appeal the Decision does not provide a remedy to the Defence on those issues. In a similar vein, to the extent that Issues 1, 2, 3, 6 and 7 purportedly relate to the disclosure of the medical documents, they also fail to arise from this Decision.
8. The Single Judge ordered the Prosecution to “reassess whether there are compelling grounds to disclose these documents to the Defence in the case against Charles Blé Goudé and, if this is found to be the case, provide the reasons for which disclosure is deemed necessary despite the nature of the information contained in this documentation.”²⁵ The Single Judge did not authorise the Prosecution to disclose the medical documents at this stage, but instead required the Prosecution to review its position on their disclosure and to seek further judicial authorisation to disclose, if and when required. Therefore, the issues relating to the disclosure of the medical documents do not arise from the Decision, as the matter remains open and dependent on the subsequent determination by the Chamber, subject to the Prosecution’s own further re-

¹⁷ Corrigendum, paras.54-55.

¹⁸ Corrigendum, paras.56-59.

¹⁹ Corrigendum, paras.73-78.

²⁰ Corrigendum, paras.79-83.

²¹ Corrigendum, paras.2, 25-28.

²² Corrigendum, paras.50-53.

²³ Corrigendum, paras.60-72.

²⁴ Corrigendum, paras.73-78.

²⁵ Decision, para.7. See also Disposition.

assessment. The matter is not yet ripe for certification for appeal. If at all, the proper juncture for any application for leave to appeal would be when a further decision is rendered.

Conclusion

9. For the above reasons, the Application should be rejected.



Fatou Bensouda, Prosecutor

Dated this 30th day of June 2014

At The Hague, The Netherlands