

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

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

Date: **30 June 2015**

TRIAL CHAMBER I

Before:

**Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Bertram Schmitt**

SITUATION IN COTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLE GOUDE

Confidential

**Public Redacted Version of "Defence Objections on Access to Confidential
Material", 28 April 2015, ICC-02/11-01/15-45-Conf**

Source: Defence of Mr Charles Blé Goudé

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

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Other

Introduction

1. On 2 April 2015 and on 13 April 2015, Trial Chamber I (“the Trial Chamber”) instructed the parties and participants “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.”¹
2. Having reviewed all the confidential, confidential ex parte and under seal material, the Defence of Charles Blé Goudé (“the Defence”) hereby indicates its objections as instructed by the Chamber.
3. The Defence files the present objections as confidential as they refer to confidential materials which the Defence intends to respect.

I. Procedural history

4. On 11 March 2015, the Chamber issued two decisions: (i) the “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” (“the Decision on the *Gbagbo* case record”),² and (ii) the “Decision on Prosecution requests to join the cases of

¹ Trial Chamber I, 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), email sent by Trial Chamber I to the parties and participants on 2 April 2015, 4:10 pm.; Trial Chamber I, Decision on requests for clarification concerning review of the case record and extension of time, 13 April 2015, ICC-02/11-01/15-30.

² Trial Chamber I, 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 to it, 11 March 2015, ICC-02/11-01/11-809.

The Prosecutor v. Laurent Gbagbo and The Prosecutor v. Charles Blé Goudé and related matters (“the Joinder Decision”).³

5. On 27 March 2015, the Defence of Mr. Gbagbo filed a Request for clarification related to the Joinder Decision and, depending upon the clarification given, sought an extension of the 7 April 2015 deadline with three weeks (“the Request for clarification”).⁴
6. On 2 April 2015, the Defence joined the Request for clarification submitted by the Defence of Mr. Gbagbo.⁵
7. On the same day, by email sent to the parties and participants, the Chamber issued 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)” (“the Decision on clarification”),⁶ by which it granted the requested three-week extension of time but denied all other requests stating that “[the] Chamber will provide reasons for this decision in due course.”
8. On 8 April 2015, the Defence submitted a request for clarification on the deadline applying for seeking leave to appeal the above mentioned decision

³ Trial Chamber I, Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters, 11 March 2015, ICC-02/11-02/11-222, ICC-02/11-01/11-810 and ICC-02/11-01/15-1.

⁴ 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 premiere instance I le 11 mars 2015 (ICC-02/11-01/11-810), 27 March 2015, ICC-02/11-01/15-14, para. 25-26.

⁵ 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 premiere instance I le 11 mars 2015 (ICC-02/11-01/11-810)” and Request for clarification of the same decision, 2 April 2015, ICC-02/11-01/15-20.

⁶ Trial Chamber I, 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), email sent by Trial Chamber I to the parties and participants on 2 April 2015, 4:10 pm.

and the Defence also requested to be granted leave to appeal the decision if the deadline would begin to run from 2 April 2015.⁷

9. On 13 April 2015, the Chamber issued the reasoned “Decision on requests for clarification concerning review of the case record and extension of time” (“the reasoned Decision”).⁸

II. Submissions

10. The Defence understands that every party and participant shall have access to every material filed in the joint case and in the *Gbagbo* and *Blé Goudé* cases before the Joinder Decision. Therefore, the principle is of a full and complete access to every material for parties and participants while, by exception, a party may oppose the communication of a specific filing to another party or participant.
11. Based on this pattern, the Defence hereby submits that some documents filed as confidential during the pre-trial stage should not be communicated to the participants while the Defence also anticipates that future filings related to private matters should maintain their level of confidentiality.

A. Applicable law and preliminary observation on victims’ participation

12. Article 68(3) of the Rome Statute (“the Statute”) sets the legal framework in which the victims may participate to the proceedings in very concise terms:

⁷ 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)”, 8 April 2015, ICC-02/11-01/15-24.

⁸ Trial Chamber I, Decision on requests for clarification concerning review of the case record and extension of time, 13 April 2015, ICC-02/11-01/15-30.

“Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.”⁹

13. On this specific matter, the jurisprudence of the Court is well-established.

Notably, the Appeals Chamber ruled in the *Situation in the Democratic Republic of Congo*¹⁰ that: “Participation pursuant to article 68(3) of the Statute is confined to proceedings before the Court, and aims to afford victims an opportunity to voice their views and concerns on matters affecting their personal interests. This does not equate them as the case law of the Appeals Chamber conclusively establishes, to parties to the proceedings before a Chamber, restricting their participation to issues arising therein touching upon their personal interests, and then at stages and in a manner not inconsistent with the rights of the accused and a fair and impartial trial”¹¹

14. Concretely, article 68(3) of the Statute guarantees the victims’ participation to the trial in a way that is appropriate to the conduct of the proceedings and that respects the rights of the Defence. This way to victims’ participation is found through the control of the Chamber. However, the Appeals Chamber has always been clear on the point that victims do not equate to parties. They are participants, which is a specific status that attributes rights which are different from those granted by the Statute and the Rules of Procedure and Evidence (“the RPE”) to the parties. The difference is not only semantic; it is fundamental as it determines the roles to be played during the trial.

⁹ Emphasis added.

¹⁰ ICC-01/04-556.

¹¹ *Ibid.*, para. 55. Emphasis added. See also: ICC-01/04-01/06-824; ICC-01/04-503; ICC-02/05-138; ICC-01/04-01/06-1432.

15. As a consequence, the Defence submits that disclosing the following confidential filings to the participants (including the LRV) could be prejudicial to the rights of the Accused and to a fair and impartial trial.

B. Material filed before Pre-Trial Chamber I (“the Pre-Trial Chamber”)

16. On [REDACTED], the former Defence team of Charles Blé Goudé filed the “[REDACTED] ICC-02/11-02/11-[REDACTED]”¹² before the Pre-Trial Chamber. This filing contains several references to [REDACTED]. The Defence submits that these discussions and the references they make should not be of access to the LRV as they do not affect the victims’ personal interests and their disclosure would seriously impair the rights of the Accused and the fairness of the trial. These filings indeed refer to [REDACTED]. Besides, it does not contain information that could benefit, affect or be detrimental to the victims. For the foregoing reasons, the Defence respectfully requests the Trial Chamber to retain the confidentiality of filing ICC-02/11-02/11-[REDACTED], i.e. to withhold the LRV from access.

17. The Defence has reviewed every other material filed as confidential in the *Blé Goudé* case and does not have further objection to the parties and participants being granted access to it. However, the Defence would appreciate that every party and participant to the present case be reminded of the confidential nature of these materials. Access to confidential materials has been granted to the participants (including the LRV) by the Trial Chamber. As this decision upholds the decisions adopted by the Pre-Trial Chamber in the *Gbagbo* and the *Blé Goudé* cases, this is a new legal and procedural framework for the parties and participants, who are the protagonists of the case. Still, it does not alter the level of confidentiality of each document. Access to confidential

¹² [REDACTED] ICC-02/11-02/11-[REDACTED], ICC-02/11-02/11-[REDACTED].

material does not mean that the material has become public. It only means that the document has been disclosed to a larger category of protagonists in the case but the document retains its confidential nature.

C. Material to be filed before the Trial Chamber

18. Regarding the future filings to be submitted in the *Gbagbo* and *Blé Goudé* case, the Defence would like to raise objections to the other parties and the participants being granted access to materials concerning the Accused's health, private life and detention conditions as well as any other private related matters.
19. Private matters are protected under every international instrument of human rights.¹³ This protection is of a fundamental nature and shall apply to every human being. When it concerns a person under pre-trial detention, concerns about private life are even more important and sensitive as the person under scrutiny is deprived of most of his freedom to move although he has not been convicted yet. Specific international instruments apply to the rights of detainees.¹⁴ The situation under which a person is in detention calls for the maximal respect of private life. Under such a specific situation, not only privacy is at stake, but also dignity. When addressing the issue of confidential filings concerning Mr Blé Goudé's private related matters, the Defence respectfully requests the Court to take into account this particular situation and to grant the only justifiable level of protection to the Accused's privacy and dignity, i.e. to protect the confidential documents as follows:

¹³ See *inter alia*, European Convention on Human Rights, art. 8; American Convention on Human Rights, art. 11; International Covenant on Civil and Political Rights, art. 17.

¹⁴ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988; Standard Minimum Rules for the Treatment of Prisoners, 1955; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly resolution 43/173 of 9 December 1988.

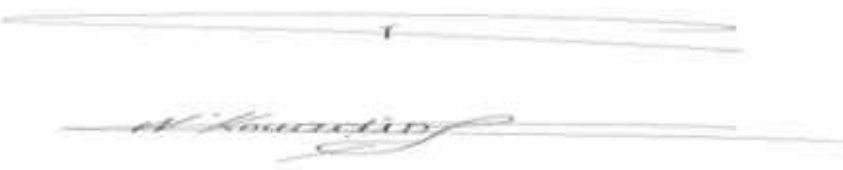
- a. The confidential filings should only be available to the parties and the Trial Chamber only, and
- b. The confidential *ex parte* filings should only be available to the parties addressed and the Trial Chamber.

20. Following the same reasoning, the Defence would like to inform the Trial Chamber that it has no objection to not be granted access to any filing concerning private related matters which affect Mr. Laurent Gbagbo.

RELIEF SOUGHT

The Defence respectfully requests Trial Chamber I to:

- To withhold filing ICC-02/11-02/11[REDACTED] from the participants' access (including the LRV),
- To restrict access to every future filing concerning the Accused's health, private life, detention conditions and any other private related matters as follows:
 - o To restrain the access to confidential filings to the parties and Trial Chamber I only, and
 - o To restrain the access to confidential *ex parte* filings to the parties addressed and to Trial Chamber I only.



A handwritten signature in dark ink, appearing to read 'Kooops', is written over a horizontal line. The signature is stylized with a long, sweeping underline.

Mr. Kooops, Lead Counsel and Mr. N'Dry, Co-Counsel

Dated this 30 June 2015.

At The Hague, the Netherlands