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TRIAL CHAMBER I

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

**Prosecution's response to Laurent Gbagbo's application for leave to appeal the
Decision on objections concerning access to confidential material on the case
record**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr James Stewart
Mr Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

Legal Representatives of Victims

Ms Paolina Massidda

States Representatives

REGISTRY

Registrar

Mr Herman von Hebel

Introduction

1. The application for leave to appeal¹ the Single Judge's decision on objections concerning access to confidential material on the case record,² filed by the Defence of Laurent Gbagbo³ should be rejected. The issue raised in the Application does not arise from the Decision. Similar to a prior Defence application for leave to appeal, this Application also "rel[ies] mainly on assertions which misinterpret, make[s] unfounded assumptions concerning or repeat[ing] submissions already taken into account [by the Chamber]".⁴

Submissions

2. The issue whether the Single Judge erred by not indicating why the Defence should make non-public evidentiary material available to the Legal Representative of Victims ("LRV")⁵ does not arise from this Decision. The Decision only deals with objections "to any party or participant being granted access to any confidential document or material"⁶ which, according to the current classification is not accessible to them.⁷ Contrary to the Defence's contention,⁸ evidentiary material that the Defence intends to use in this case falls outside the scope of the Decision: the Trial Chamber and the Single Judge have already held in previous decisions that the LRV has a right to access such material.

3. In particular, during a status conference on 4 November 2014, the Trial Chamber held that all filings must be made available to the LRV, unless the party provides good reasons to depart from that principle pursuant to regulation 23*bis* of the

¹ ICC-02/11-01/15-113-Conf-Exp and ICC-02/11-01/15-113-Red ("Application").

² ICC-02/11-01/15-101 ("Decision").

³ ("Defence").

⁴ ICC-02/11-01/15-117, para.21.

⁵ Application, paras.24-43 ("Issue").

⁶ See Decision, para.1, referring to Joinder Decision, ICC-02/11-01/15-1, para.73.

⁷ See Decision, para.1, referring to Joinder Decision, ICC-02/11-01/15-1, para.72.

⁸ Application, paras.26, 38.

Regulations of the Court.⁹ On 20 November 2014, the Single Judge reiterated that the LRV shall have access to all confidential documents filed in the record of the case before this Chamber, namely filings, transcripts and material, both public and confidential.¹⁰

4. On 19 January 2015, the Single Judge re-stated that the LRV shall have access to confidential filings and materials.¹¹ He specified that “pursuant to Rules 131(2) and 92(5) of the Rules, the LRV has a general right to access the case record and that this right shall apply to confidential filings, as well as any material uploaded in Ringtail, including documents disclosed pursuant to Rule 77 of the Rules and Article 67(2) of the Statute.”¹² The Single Judge also held that “to ensure that victims' participation is effective, the LRV must be notified in a timely manner of all documents filed in the record and that it shall therefore have access to the filings and material uploaded in Ringtail, both public and confidential”.¹³ Although the scope of this particular decision was limited to granting the LRV access to a number of specific documents,¹⁴ the Single Judge relied on the broader principle of general access by the LRV to confidential filings and material, which he had previously established.

5. Finally, on 13 April 2015, the Trial Chamber declined to entertain a Defence request for clarification as to whether materials should be transmitted to the LRV, given “previous instructions by the Chamber and the Single Judge in this regard”.¹⁵

6. The Decision directs the Parties and participants to upload all materials in the eCourt databases of the *Gbagbo* and *Blé Goudé* cases to the eCourt database (Ringtail) of the joint case and in accordance with the instructions given in paragraphs 16 and

⁹ ICC-02/11-01/11-T-25-Red-ENG, p.4, ln.22-p.7, ln.7. The Trial Chamber issued an equivalent order in the *Blé Goudé* case: ICC-02/11-02/11-T-9-Red-ENG, p.6, lns.5-13.

¹⁰ ICC-02/11-01/11-724, para.4; see also ICC-02/11-01/11-809, para.18.

¹¹ ICC-02/11-01/11-809, para.19.

¹² ICC-02/11-01/11-749, para.15.

¹³ ICC-02/11-01/11-749, para.20.

¹⁴ ICC-02/11-01/11-809, para.18; see also Application, para.6.

¹⁵ ICC-02/11-01/15-30, para.8.

19 of the Decision.¹⁶ However, it does not create a new obligation for the Parties and participants to give access to the LRV to non-public evidentiary material. That obligation derives from the Single Judge's and the Trial Chamber's prior decisions referred to above.

7. The Defence's arguments do not demonstrate that the Issue arises from the Decision or that it meets the criteria for leave to appeal. They rely on the erroneous assumption that the Single Judge in the Decision ruled on the matter of the LRV's access to non-public evidentiary materials.¹⁷ Moreover, the Application is an attempt by the Defence to repeat submissions and to re-litigate a matter that has already been repeatedly entertained and decided by the Trial Chamber and the Single Judge.

8. Since the issue raised in the Application is one that clearly does not arise from the Decision, the application should be dismissed on this basis alone. Accordingly, the Prosecution need not address in this response any of the other requirements set out in article 82(1)(d) for leave to be granted.

Conclusion

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



Fatou Bensouda, Prosecutor

Dated this 3rd day of July 2015

At The Hague, The Netherlands

¹⁶ Decision, p.12, 6th direction.

¹⁷ Application, paras.26-43.