

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **24 June 2016**

TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Confidential *with* Confidential Annex

**Prosecution's request to issue public redacted version of confidential decision of
15 January 2013 (ICC-02/11-01/11-351-Conf)**

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 Pre-Trial Chamber in this case, along with three Trial Chambers in other cases, has issued a confidential decision pertinent to the approach to be taken to disclosure (under rule 77 of the Rules of Procedure and Evidence) of requests for assistance (RFAs).¹ Although the Court's jurisprudence reflects a generally consistent approach on this issue, this is to some extent obscured by the classification of the relevant decisions. This has become relevant to recent litigation in other cases.²

2. Accordingly, to assist in the exposition of this law in the future, the Prosecution requests this Chamber to issue a public version of the Pre-Trial Chamber's Decision, suitably redacted.

Confidentiality

3. This motion is filed confidentially to reflect the confidential status of the Pre-Trial Chamber's Decision. However, if the application is granted, the Prosecution requests the Chamber to reclassify as "public" this application, but not its annex.³

Submissions

4. There is a general interest in the publicity of this Court's proceedings,⁴ notably including decisions which interpret "principles and rules of law".⁵ To the extent possible, the Parties and Chambers of this Court should attempt to comply with this principle, taking into account the other requirements of the Court's mandate

¹ ICC-02/11-01/15-351-Conf ("Pre-Trial Chamber's Decision").

² See e.g. ICC-02/04-01/15-457 ("*Ongwen* Decision"), para. 14 (ruling on the disclosure under rule 77 of RFAs); ICC-02/04-01/15-462 (seeking reconsideration of the *Ongwen* Decision); ICC-02/04-01/15-468 (denying reconsideration of the *Ongwen* Decision).

³ See Confidential Annex A.

⁴ See e.g. Statute, article 64(7) ("The trial shall be held in public").

⁵ See e.g. Statute, article 21(2) ("The Court may apply principles and rules of law as interpreted in its previous decisions"). To give effect to this provision, it is manifestly necessary that Chambers of the Court may access relevant decisions interpreting principles and rules of law.

(including *inter alia* the protection of victims and witnesses, the effectiveness of investigations, and the rights of third parties).⁶

5. It may not always be necessary to produce public versions of certain procedural motions and decisions, where the legal principles appear uncontroversial and the facts at issue must largely remain confidential. Yet Chambers should remain receptive to requests for reclassification, with suitable redactions (which may be extensive), if circumstances change. For example, the Appeals Chamber has, at the Prosecution's request, issued a very heavily redacted version of a judgment on a point of law of general importance.⁷

6. Until now, the disclosure of RFAs or similar materials under rule 77 appears to have been decided by the ordinary application of legal principles which are found in numerous public decisions. As such, there was no compelling interest in making the legal reasoning of the Pre-Trial Chamber's Decision public, taking into account the necessary confidentiality of the facts. Yet the approach of the Pre-Trial Chamber's Decision, with other confidential case-law, may recently have assumed new significance for the interpretation of the Statute and Rules in this respect.

7. Mindful of the ongoing need to maintain the confidentiality of the facts surrounding the Pre-Trial Chamber's Decision, therefore, the Prosecution requests the issue of a public version with redactions as proposed in Confidential Annex A.

⁶ See *e.g.* Statute, articles 54(3)(e), 57(3)(c), 64(2) and (7), 68(1) and (2), 69(5), 72, 73, 87(3), 93(8), 99(5); rule 81.

⁷ See *e.g.* ICC-ACRed-01/16, para. 64.

Conclusion

8. For the reasons above, the Chamber should issue a public redacted version of the Pre-Trial Chamber's Decision.



Fatou Bensouda, Prosecutor

Dated this 24th day of June 2016

At The Hague, The Netherlands