



Original: English

No.: ICC-02/11-01/15
Date: 14 September 2021

THE APPEALS CHAMBER

Before: Judge Marc Perrin de Brichambaut, Presiding
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

Prosecution response to the *“Requête visant à ce que les décisions ayant été rendues par les Juges par voie d'email soient soumises au dossier de l'affaire”*

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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1. On 3 September 2021, the Defence for Mr Gbagbo filed a request for all decisions rendered by the Trial Chamber by email in this case to be added to the case file ("Request").¹ Specifically, the Defence requests the Appeals Chamber to order the Registry, Parties and participants to enter into consultations/discussions to identify together the email decisions which must be included in the case file, and to determine their appropriate classification.
2. The Prosecution agrees with the Defence that the Trial Chamber's email decisions should be placed on the record of the case to ensure the completeness of the record and to serve the interest of publicity.² This would also be consistent with the practice of trial chambers in recent cases before the Court.³
3. However, the Prosecution does not consider that consultations/discussions between the Registry, Parties and participants would be the most efficient means to achieving this end. Such a process risks becoming an open-ended and time-consuming exercise that is ill-equipped to swiftly resolve any issues that may arise. Specifically, each Party/participant's record of email decisions will differ, given that some email decisions were issued as confidential, *ex parte* and thus would not be visible to all Parties/participants. It would not be efficient for the Parties/participants to compile and swap lists for cross-checking, nor would they be in a position to freely discuss or share any confidential, *ex parte* decisions. Moreover, without formal coordination and judicial oversight, there is no mechanism for ensuring that the consultations/discussions are concluded within a reasonable time and that disputes that may arise, such as regarding the content of the list or classifications, are resolved expeditiously.
4. Rather, the process of registering the email decisions onto the record should be a structured one, led by the Registry, with judicial oversight. This is appropriate given

¹ ICC-02/11-01/15-1410 ("[Request](#)").

² [Request](#), paras. 4-5.

³ [Request](#), paras. 7-8 (citing the examples in *Yekatom & Ngaïssona* and *Gicheru*). *Ongwen* was another recent case in which the Trial Chamber ensured that all email decisions were published in the record of the case as part of periodic reports filed by the Registry: [ICC-02/04-01/15-1762-Red](#), para. 25 (fn. 26).

that it is the responsibility of trial chambers to ensure the completeness of the record,⁴ and the responsibility of the Registry to maintain and preserve the complete and accurate record of the trial pursuant to article 64(10) of the Rome Statute and rules 15 and 137 of the Rules of Procedure and Evidence. It is also appropriate for the Registry to lead the exercise given the existence of confidential/*ex parte* decisions as noted above.

5. Accordingly, *in lieu* of the order for consultation requested by the Defence, the Prosecution suggests that the Chamber order a procedure along the following lines. *First*, the Registry should compile a list of email decisions rendered by Trial Chamber I. The Registry may liaise with the appropriate Legal Officers of the former Trial Chamber I, and may also seek the Parties' and participants' assistance in compiling the full list if needed. *Second*, given that there are more than 100 such email decisions, it would greatly assist the Parties and participants in reviewing the list if the Registry were to categorise each decision in the list according to the type of decision rendered (e.g. time/page extension decisions, decisions on reclassification, etc). *Third*, the Registry should send the categorised list of decisions to the Parties and participants for them to indicate whether there are any discrepancies as to items on the list, and to nominate a classification for each decision. To the extent that any email decisions had been issued *ex parte*, these should be listed separately and sent only to the Parties/participants who were the original recipients of the email for them to nominate the appropriate classification. *Fourth*, subject to discrepancies or disputes being resolved, the Registry may file the email decisions as annexes to a report filed in the proceedings.

6. While the Appeals Chamber may exercise judicial oversight over the process, including resolving any disputes between the Parties and participants as to the list or the classifications, it may be more effective for a trial chamber to do so given that the subject decisions are records from the trial stage. To that end, given that this case is

⁴ [Rome Statute](#), article 64(10).

currently not assigned to any trial chamber,⁵ the Appeals Chamber may wish to appoint a trial chamber to facilitate and oversee the process, or request the Presidency to appoint a bench for that purpose.

7. Finally, the Prosecution notes that this Request follows on from the Defence's "*Requête afin que le dossier de l'affaire soit ouvert au public le plus largement possible et que dans ce but soit créée une base de données publique*",⁶ to which the Prosecution responded,⁷ and which remains pending before the Appeals Chamber. To the extent that the Chamber's decision on the Defence's earlier request entails any orders regarding the confidentiality of the case file, it may impact upon the classifications of the email decisions to be placed onto the record.

Conclusion

8. The Prosecution agrees that the email decisions rendered by the Trial Chamber should be placed on the record in this case, however the Defence's request for an order for a process of consultations/discussions between the Registry, Parties and participants should be rejected. The Prosecution proposes instead that the Appeals Chamber order the Registry to lead a structured process as set out in paragraph 5 above, with the appropriate judicial oversight.



Karim A. A. Khan QC, Prosecutor

Dated this 14th day of September 2021

At The Hague, The Netherlands

⁵ [ICC-02/11-61](#), p. 7.

⁶ [ICC-02/11-01/15-1408](#).

⁷ [ICC-02/11-01/15-1409](#).