



Original: **French**

No.: ICC-02/11-01/15  
Date: 3 September 2021

**THE APPEALS CHAMBER**

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

**SITUATION IN CÔTE D'IVOIRE  
IN THE CASE OF  
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

**Public Document**

**Request for the Decisions which the Judges Issued via Email to  
Be Placed in the Record of the Case**

**Source:** Defence Team for Laurent Gbagbo

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

**Office of the Prosecutor**  
Mr Karim A. A. Khan QC  
Mr James Stewart

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**Legal Representatives of Victims**  
Ms Paolina Massidda

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparations**

**Office of Public Counsel for Victims**

**Office of Public Counsel for the Defence**

**States' Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**  
Mr Peter Lewis

**Counsel Support Section**

**Deputy Registrar**

**Victims and Witnesses Section**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

## I. Procedural history

1. On 2 August 2021, the Defence wrote to the Court Management Section (CMS) of the Registry:

[TRANSLATION] During proceedings, as you know, it is not uncommon for Judges to make decisions and/or orders via email, in particular at the trial phase. The Defence has realized, in the course of the exercise of declassification and archiving which it is now undertaking in the case, that decisions and orders made via email are not officially entered into the record. In the Defence's view, those decisions and orders need to be afforded official status and hence need to be assigned registration numbers, which will enable them to be referenced accurately, consulted (in court records, for example), classified (as confidential or public) and so forth. Could you kindly let us know what procedures the Registry has in place for the actual inclusion, in the record of the case, of the decisions and orders issued by email?<sup>1</sup>

2. On 5 August 2021, following some discussion with CMS, the Defence was informed that (1) the procedure adopted in other cases was that the Registry filed, every three or four months throughout the trial, a report to which the decisions issued by email were appended, and (2) as regards the case *sub judice*, the Defence would have to make a request to the Appeals Chamber for the decisions issued by email to be placed in the record of the case.

## II. Discussion

3. This is a request to have the decisions issued by email in the *Gbagbo and Blé Goudé* trial formally placed in the record of the case. This request is founded on two considerations.

4. The first is that the record of the case should be as complete as possible. Just as decisions handed down in writing are available in Court Records and those rendered orally in court are available in the hearing transcripts, it seems par for the course that decisions issued by email should, likewise, be formally placed in the record of the case and consultable.

5. The second consideration follows from the principle of publicity and from the need to ensure that justice is transparent. Openness of proceedings is one of the fundamental principles which afford the general public an understanding of how

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<sup>1</sup> Email from the Defence for Laurent Gbagbo to CMS on 2 August 2021 at 12.18.

justice is delivered. It entails, in particular, making the record publicly available, which enables the general public to take ownership of the judicial process by allowing it to see the delivery of justice in operation and how the Court works. Transparency is a cardinal principal of modern, democratic justice.

6. The Defence notes in this regard that, in recent cases, the Judges have introduced a system whereby decisions issued by email are periodically entered into the official record of the case by being appended either to a report of the Registry or to a decision of the Bench, precisely in order to respect the principle of public proceedings.

7. For instance, in *Yekatom and Ngaissona*, it was decided:

In order to further advance the principle of publicity in the future, the Presiding Judge directs the Registry to file all email decisions on the case record in quarterly reports (the ‘Report(s) on Email Decisions’), starting on 15 September 2020. When a decision concludes a chain of emails, these emails shall also be filed in the record of the case.<sup>2</sup>

8. Similarly, in *Gicheru*, on 15 July 2021, Pre-Trial Chamber A issued a “Decision on the filing of all decisions and orders issued by email into the record of the proceedings” in which it stated that “some of its decisions and orders have been issued by email in the interest of the expeditiousness of the proceedings on minor procedural issues or when circumstances so warranted.”<sup>3</sup> The Chamber went on to say that those decisions and orders “have generally been recorded through footnotes contained in decisions that have been filed”<sup>4</sup> but that “in order to have a complete record of the proceedings and for the purposes of publicity of the proceedings, the Chamber finds it appropriate to file all decisions and orders issued to date by email”.<sup>5</sup>

9. In the light of those precedents, the Defence respectfully moves the Appeals Chamber to order the Registry to put in place a procedure for consultation between the Parties, participants and Registry so that they may identify, together, the decisions issued by email in the trial phase of *Gbagbo and Blé Goudé* which are to be entered into the record of the case, and so that they may determine together the appropriate

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<sup>2</sup> ICC-01/14-01/18-631, para. 76. See also ICC-01/12-01/18-1040 in *Al Hassan*.

<sup>3</sup> ICC-01/09-01/20-152, para. 1.

<sup>4</sup> ICC-01/09-01/20-152, para. 1.

<sup>5</sup> ICC-01/09-01/20-152, para. 2.

classification of each decision, relative to the entirety of the record. It will then be open to them to apply to the Appeals Chamber, jointly if need be, for approval of the outcome of their discussions or for resolution of any outstanding questions, before the decisions issued by email are formally placed, with the leave of the Appeals Chamber, in the record of the case.

**FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER TO:**

- **Order** the Parties, the participants and the Registry to embark on discussions Registry so as to identify, together, the decisions issued by email in the trial phase of *Gbagbo and Blé Goudé* which are to be entered into the record of the case, and so as to determine together the appropriate classification of each decision, relative to the entirety of the record.

[signed]

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Emmanuel Altit

Lead Counsel for Laurent Gbagbo

Dated this 3 September 2021 at The Hague, Netherlands