



Original: English

**No. ICC-02/11-01/15 A
Date: 15 October 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

**Decision on counsel for Mr Gbagbo's requests (ICC-02/11-01/15-1408-tENG and
ICC-02/11-01/15-1410-tENG)**

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

The Office of the Prosecutor

Mr Karim A. A. Khan QC

Mr James Stewart

Counsel for Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Legal Representative of Victims

Ms Paolina Massidda

Counsel for Charles Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

REGISTRY

Registrar

Mr Peter Lewis

Other

Presidency

The Appeals Chamber of the International Criminal Court,

Further to the appeal of the Prosecutor against the decision of Trial Chamber I of 15 January 2019 (ICC-02/11-01/15-T-232-ENG), with reasons issued on 16 July 2019 (ICC-02/11-01/15-1263 and its annexes), and its “Judgment in the appeal of the Prosecutor against Trial Chamber I’s decision on the no case to answer motions” of 31 March 2021 (ICC- 02/11-01/15-1400 and its annexes), issued in that appeal,

Having before it the “Request for the Record of the Case to be Made Public to the Greatest Extent Possible and for the Creation of a Public Database to that End” of 19 July 2021 (ICC-02/11-01/15-1408-tENG), Having also before it the “Request for the Decisions which the Judges Issued via Email to Be Placed in the Record of the Case” of 3 September 2021 (ICC-02/11-01/15-1410-tENG),

Renders the following

DECISION

Counsel for Mr Gbagbo’s requests (ICC-02/11-01/15-1408-tENG and ICC-02/11-01/15-1410-tENG) are dismissed. The requests are referred to the Presidency for the appointment of a chamber for their consideration.

REASONS

I. PROCEDURAL HISTORY

1. On 31 March 2021, the Appeals Chamber confirmed Trial Chamber I’s decision which had acquitted Mr Gbagbo and Mr Blé Goudé of all charges of crimes against humanity.¹

¹ [Judgment in the appeal of the Prosecutor against Trial Chamber I’s decision on the no case to answer motions](#), ICC-02/11-01/15-1400 (notified on 1 April 2021), p. 3, para. 2.

2. On 1 April 2021, the Appeals Chamber designated Judge Perrin de Brichambaut as presiding judge for residual matters arising from the Prosecutor’s appeal in the *Gbagbo and Blé Goudé* case (hereinafter: “Decision on the Presiding Judge”).²
3. On 19 July 2021, counsel for Mr Gbagbo filed before the Appeals Chamber the “Request for the Record of the Case to be Made Public to the Greatest Extent Possible and for the Creation of a Public Database to that End ” (hereinafter: “First Request”).³
4. On 2 August 2021, the Prosecutor filed a response to the First Request (hereinafter: “Prosecutor’s Response to the First Request”).⁴
5. On 3 September 2021, counsel for Mr Gbagbo filed before the Appeals Chamber the “Request for the Decisions which the Judges Issued via Email to Be Placed in the Record of the Case” (hereinafter: “Second Request”).⁵
6. On 14 September 2021, the Prosecutor filed a response to the Second Request (hereinafter: “Prosecutor’s Response to the Second Request”).⁶
7. No response was made to the abovementioned two requests by counsel for Mr Blé Goudé or the victims.

II. SUMMARY OF SUBMISSIONS

A. The First Request

1. Counsel for Mr Gbagbo’s Submissions under the First Request

8. In the First Request, counsel for Mr Gbagbo submits that while there are public redacted versions of the acquittal decision of the Trial Chamber and the Judgment of the Appeals Chamber, the public interested in the proceedings does not have access to the *evidence* referred to in these decisions.⁷ He argues that it is crucial that the public

² [Decision on the Presiding Judge of the Appeals Chamber for any residual matters pertaining to the appeal against Trial Chamber I’s decision on the no case to answer motions](#), ICC-02/11-01/15-1401.

³ [ICC-02/11-01/15-1408-tENG](#) (notified on 3 August 2021); An original French version was filed on 19 July 2021, [ICC-02/11-01/15-1408](#).

⁴ [Prosecution response to the “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”](#), ICC-02/11-01/15-1409.

⁵ [ICC-02/11-01/15-1410-tENG](#) (notified on 7 October 2021); An original French version was filed on 3 September 2021, [ICC-02/11-01/15-1410](#).

⁶ [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”](#), ICC-02/11-01/15-1412.

⁷ [First Request](#), paras 3-4 (emphasis added).

gains access to the evidence in order: (i) to truly understand the content of these decisions, (ii) to allow the evidence to be used in other legal proceedings (e.g., in Côte d'Ivoire), and (iii) to ensure that the principle of transparency in the work of justice is respected.⁸ Counsel for Mr Gbagbo thus asserts that it is essential that the ICC, as the first permanent international criminal court with a universal mandate, allows the public the widest possible access to its cases,⁹ noting that the establishment of such a database has already taken place at the International Residual Mechanism for Criminal Tribunals.¹⁰

9. Accordingly, counsel for Mr Gbagbo requests that the Appeals Chamber: (i) direct the parties to proceed, in consultation with each other, to systematically consider whether the evidence and witness statements in the case file can be made public; and (ii) direct the Registry to create, in consultation with the parties, a database to provide the public access to all public materials in the case file.¹¹

2. *The Prosecutor's Response to the First Request*

10. The Prosecutor submits that the First Request should be dismissed for its vagueness and the excessive scope of relief requested.¹² The Prosecutor essentially argues that, while he agrees that publicity and transparency of cases before the Court is important and necessary, counsel for Mr Gbagbo fails to substantiate why the wholesale de-classification of the case file and the creation of a new database to render public evidence accessible to the public is mandatory to achieve these ends or justified in light of the limited resources of the parties and the Court.¹³ He avers, *inter alia*, that the creation of such database would be a significant long-term project and the need for such a facility should be carefully assessed against the constraints of time, funding and resources of the Court.¹⁴

11. The Prosecutor therefore requests that the Appeals Chamber dismiss the First Request, and alternatively, “direct the Defence to identify specific records that it seeks

⁸ [First Request](#), paras 5-6.

⁹ [First Request](#), paras 14-25.

¹⁰ [First Request](#), paras 24-25.

¹¹ [First Request](#), p. 11.

¹² [Prosecutor's Response to the First Request](#), paras 1, 15.

¹³ [Prosecutor's Response to the First Request](#), para. 1.

¹⁴ [Prosecutor's Response to the First Request](#), para. 14.

to have reviewed by the Prosecution”.¹⁵ He further requests that, in the event the Appeals Chamber grants the First Request, it “allow the Prosecution at least ten months to conduct the review of the case file, with the opportunity to approach the Chamber for a request for an extension of time, if so required”.¹⁶

A. Second Request

1. Counsel for Mr Gbagbo’s Submissions under the Second Request

12. In the Second Request, counsel for Mr Gbagbo requests that any judicial decisions issued by email during the trial phase in the *Gbagbo and Blé Goudé* case be formally filed.¹⁷ Counsel for Mr Gbagbo submits that, just as written decisions are available via the Court Records database and oral decisions are accessible through the transcripts of hearings, decisions rendered by email should also be placed in the case file and be available for consultation.¹⁸ He further argues that the principle of publicity and the need to ensure the transparency of justice means that decisions rendered by email should be placed in the case file and be available for consultation.¹⁹

13. Counsel for Mr Gbagbo notes that in recent ICC cases (e.g. *Yekatom and Ngaïssona* and *Gicheru*)²⁰ the judges have implemented a system that allows decisions rendered by email to be periodically filed in the case record as an annex to either a Registry report or a decision rendered by the relevant chamber.²¹ In light of these precedents, counsel for Mr Gbagbo requests that the Appeals Chamber order the Registry to establish a procedure for consultation between the parties, participants and the Registry in order to jointly identify the decisions issued by email during the trial phase in the *Gbagbo and Blé Goudé* case, and to determine the appropriate level of classification of those decisions.²² He proposes that the parties, participants and the Registry may then refer the matter to the Appeals Chamber, if necessary through joint

¹⁵ [Prosecutor’s Response to the First Request](#), para. 15.

¹⁶ [Prosecutor’s Response to the First Request](#), para. 15.

¹⁷ [Second Request](#), p. 5.

¹⁸ [Second Request](#), para. 4.

¹⁹ [Second Request](#), para. 5.

²⁰ [Second Request](#) paras 7, 8 referring to Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Initial Directions on the Conduct of the Proceedings](#), 26 August 2020, ICC-01/14-01/18-631, para. 76 and Pre-Trial Chamber A (Article 70), *The Prosecutor v. Paul Gicheru*, [Decision on the filing of all decisions and orders issued by email into the record of the proceedings](#), 15 July 2021, ICC-01/09-01/20-152, paras 1-2.

²¹ [Second Request](#), para. 6.

²² [Second Request](#), para. 9.

submissions, to seek an approval of the outcome of their discussions or to resolve any outstanding issues so that the decisions rendered by email are, by order of the Appeals Chamber, formally filed in the record of the case.²³

2. *The Prosecutor's Response to the Second Request*

14. The Prosecutor agrees with counsel for Mr Gbagbo that Trial Chamber I's email decisions should be placed on the record.²⁴ However, the Prosecutor argues that he does not consider that consultation/discussions between the Registry, parties and participants would be the most efficient means to achieve this end, as such process risks becoming an open-ended and time-consuming exercise which may not adequately identify confidential or *ex parte* email decisions.²⁵ In the Prosecutor's view, the process of registering the email decisions into the record should be "a structured one, led by the Registry, with judicial oversight".²⁶ He argues that this approach is appropriate given the existence of confidential *ex parte* decisions in the case.²⁷

15. The Prosecutor further submits that "[w]hile the Appeals Chamber may exercise judicial oversight over the process [...], it may be more effective for a trial chamber to do so given that the subject decisions are records from the trial stage".²⁸ He suggests that since the present case is not assigned to any trial chamber, "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".²⁹

III. MERITS

16. The Appeals Chamber notes that in the First Request, counsel for Mr Gbagbo requests that (i) the parties be directed to review the case file with a view to making it as public as possible, and that (ii) a database giving the public access to all public materials in the case file be created by the Registry.³⁰ In the Second Request, counsel for Mr Gbagbo requests that the Appeals Chamber order the Registry to set out a

²³ [Second Request](#), para. 9.

²⁴ [Prosecutor's Response to the Second Request](#), para. 2.

²⁵ [Prosecutor's Response to the Second Request](#), para. 3.

²⁶ [Prosecutor's Response to the Second Request](#), paras 4, 8.

²⁷ [Prosecutor's Response to the Second Request](#), para. 4.

²⁸ [Prosecutor's Response to the Second Request](#), para. 6.

²⁹ [Prosecutor's Response to the Second Request](#), para. 6.

³⁰ [First Request](#), p. 11.

procedure for consultation among the parties, participants and the Registry in order to jointly identify the decisions issued by email during the *Gbagbo and Blé Goudé* trial phase that should be filed in the case record, and to determine the appropriate classification for each of those decisions.³¹

17. At the outset, the Appeals Chamber recalls that in the Decision on the Presiding Judge, Judge Perrin de Brichambaut was designated as the presiding judge for “any residual matters pertaining to the [...] appeal [against Trial Chamber I’s decision to acquit Mr Gbagbo and Mr Blé Goudé]”.³² In line with that decision, the Appeals Chamber considers that it is seised only of residual matters concerning the aforementioned *appeal* in the *Gbagbo and Blé Goudé* case and no more.

18. Noting the absence of any specific request concerning the appeal, for example for the reclassification or publication of a document from the appellate phase of the proceedings, the Appeals Chamber does not find that the issues raised in the two requests fall within the remit set out in the above paragraph. Furthermore, the Appeals Chamber considers that, without prejudice to any future decisions on leave to appeal, counsel for Mr Gbagbo’s possible recourse to appellate review of the matters raised in the requests should be preserved. In these circumstances the Appeals Chamber is not the proper forum for these matters to be addressed.

19. Since the mandates of the judges of the Trial Chamber in the *Gbagbo and Blé Goudé* case have expired, it is for the Presidency to assign an appropriate chamber to consider these, and any similar, requests. The Appeals Chamber thus refers the matter to the Presidency to appoint a chamber to consider the requests.

20. Accordingly, the Appeals Chamber dismisses counsel for Mr Gbagbo’s requests without further addressing their merits.

³¹ [Second Request](#), para. 9.

³² [Decision on the Presiding Judge](#), p. 3.

Done in both English and French, the English version being authoritative.



Judge Marc Perrin de Brichambaut
Presiding

Dated this 15th day of October 2021

At The Hague, The Netherlands