

**Cour
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**International
Criminal
Court**



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Date: 3 March 2015

TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF COTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

Public Document

**Response to the Defence's request for leave to respond to the replies to the
Defence Joinder Response filed by the Prosecution and by the Common Legal
Representative of victims
(ICC-02/11-01/11-792)**

Source: Office of Public Counsel for Victims

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

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I. PROCEDURAL BACKGROUND

1. On 16 December 2014, the Prosecutor filed a request to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* (the “Joinder Request”).¹

2. On 6 January 2015, the Principal Counsel of the Office of Public Counsel for Victims, acting as Common Legal Representative of the victims authorised to participate in the case (the “Common Legal Representative”),² filed a response supporting the Joinder Request.³

3. On 12 February 2015, the Defence filed a response opposing the Joinder Request (the “Defence Joinder Response”).⁴

4. On 20 February 2015, the Single Judge granted the Prosecution and the Common Legal Representative leave to reply to a discrete portion of the Defence Joinder Response, setting the deadline of 23 February 2015 for the filing of said replies.⁵

¹ See the “Prosecution’s Request to join the cases of *The Prosecutor v. Laurent GBAGBO* and *The Prosecutor v. Charles BLE GOUDÉ*”, No. ICC-02/11-01/11-738, 16 December 2014 (the “Joinder Request”).

² See the “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-138, 4 June 2012, pp. 25-26; and the “Second decision on victims’ participation at the confirmation of charges hearing and in the related proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-384, 6 February 2013, pp. 22-23.

³ See the “Consolidated Response of the Common Legal Representative of victims to the Prosecution’s request to join the *Gbagbo* and *Blé Goudé* cases (ICC-02/11-01/11-738) and to the subsequent Defence’s request (ICC-02/11-01/11-742)”, No. ICC-02/11-01/11-743, 6 January 2015.

⁴ See the “Réponse de la Défense à la « Demande de jonction des affaires *Le Procureur c. Laurent Gbagbo* et *Le Procureur c. Charles Blé Goudé* » (ICC-02/11-01/11-738-tFRA) déposée par l’Accusation.”, No. ICC-02/11-01/11-765, 12 February 2015 (the “Defence Joinder Response”).

⁵ See the “Decision on requests for leave to reply to Defence response ICC-02/11-01/11-765” (Trial Chamber I, Single Judge), No. ICC-02/11-01/11-775, 20 February 2015.

5. On 23 February 2015, the Prosecution and the Common Legal Representative filed their replies to the Defence Joinder Response (the “Prosecution Reply” and the “Common Legal Representative Reply”, respectively).⁶

6. On 2 March 2015, the Defence filed a request, *inter alia*, for leave to respond to the Prosecution Reply and to the Common Legal Representative Reply (the “Request”).⁷

7. Pursuant to regulation 24(2) of the Regulations of the Court, the Common Legal Representative submits her response to the Request.

II. RESPONSE OF THE COMMON LEGAL REPRESENTATIVE

8. The Common Legal Representative asks the Chamber to reject *in limine* the Request because it lacks any legal basis and provides additional arguments without the required previous leave by the Chamber.

9. The legal basis of the Request referred to by the Defence,⁸ namely regulation 24 of the Regulations of the Court, expressly provides that the Prosecution, the Defence, the victims or their legal representatives, and States may file “*a response to any document*” in accordance with the legal instruments of the Court and/or an order

⁶ See the “Prosecution Reply to Defence Response to Joinder Request”, No. ICC-02/11-01/11-781, 23 February 2015 (the “Prosecution Reply”); and the “Reply of the Common Legal Representative of victims to the “Réponse de la Défense à la « Demande de jonction des affaires *Le Procureur c. Laurent Gbagbo et Le Procureur c. Charles Blé Goudé* » (ICC-02/11-01/11-738-tFRA) déposée par l’Accusation.” (ICC-02/11-01/11-765)”, No. ICC-02/11-01/11-780, 23 February 2015 (the “Common Legal Representative Reply”).

⁷ See the “Requête afin que soit rejetée la réplique du Procureur intitulée « Prosecution Reply to Defence Response to Joinder Request » (ICC-02/11-01/11-781) et Demande d’autorisation aux fins de pouvoir répondre à: - la réplique du Représentant légal intitulée « Reply of the Common Legal Representative of victims to the “Réponse de la Défense à la « Demande de jonction des affaires *Le Procureur c. Laurent Gbagbo et Le Procureur c. Charles Blé Goudé* » (ICC-02/11-01/11-780) ; et à - la réplique du Procureur intitulée « Prosecution Reply to Defence Response to Joinder Request » (ICC-02/11-01/11-781), si elle n’était pas rejetée *in limine*.”, No. ICC-02/11-01/11-792, 2 March 2015 (the “Request”).

⁸ See the Request, *supra* note 7, para. 23.

by the Chamber.⁹ However, regulation 24(4) of the Regulations of the Court expressly provides that “[a] response referred to in sub-regulations 1 to 3 may not be filed to any document which is itself a response or reply”.

10. The Request seeks leave to “respond” to the Prosecution Reply and the Common Legal Representative Reply,¹⁰ *i.e.* to the replies filed by the participants to the Defence Joinder Response. Accordingly, the Common Legal Representative submits that the Request is contrary to regulation 24(4) of the Regulations of the Court and, as such, must be dismissed *in limine*.

11. This conclusion is consistent with the need to ensure the expeditiousness of the proceedings,¹¹ and with the requirement that further observations from a participant must not reiterate or support views or arguments already submitted to the Chamber.¹²

12. Moreover, the Common Legal Representative submits that the Request must also be rejected *in limine* because it provides an extensive response to the Prosecution Reply and the Common Legal Representative Reply when addressing the issues for which leave to respond is requested.

13. As the consolidated jurisprudence of the Court on requests for leave to reply pursuant to regulation 24(5) of the Regulations of the Court indicates, a participant

⁹ See regulation 24(1)-(3) of the Regulations of the Court.

¹⁰ See the Request, *supra* note 7, p. 18.

¹¹ See *mutatis mutandis* the “Decision on the Prosecutor’s Application for Leave to Reply to ‘Conclusions de la défense en réponse au mémoire d’appel du Procureur’” (Appeals Chamber), No. ICC-01/04-01/06-424 OA3, 12 September 2006, paras. 6-7.

¹² See the “Decision on the Application of the Defence for Germain Katanga to file a reply (regulation 24 of the *Regulations of the Court*)” (Trial Chamber II), No. ICC-01/04-01/07-1004-tENG, 27 March 2009, para. 3; the “Decision on Defence Request for Leave to Submit a Reply” (Trial Chamber II), No. ICC-01/04-01/07-2792, 22 March 2011, paras. 6-8; the “Decision on the Application on behalf of the Government of Kenya for Leave to Reply to the ‘Prosecution’s response to the ‘Appeal of the government of Kenya against the Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute’” (Appeals Chamber), No. ICC-01/09-01/11-239 OA, 1 August 2011, para. 10; and the “Decision on the request for suspensive effect and the request to file a consolidated reply” (Appeals Chamber), No. ICC-01/11-01/11-480 OA6, 22 November 2013, para. 22.

cannot provide supplementary arguments before being granted leave to do so.¹³ Otherwise, the requirement of obtaining leave prior to filing additional submissions would be defeated.¹⁴

14. The Common Legal Representative submits that the Request does not merely indicate the issues or aspects for which leave to respond is sought, but extensively elaborates on said issues.¹⁵

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Trial Chamber to reject *in limine* the Request.



Paolina Massidda
Principal Counsel

Dated this 3rd day of March 2015

At The Hague, The Netherlands

¹³ See the “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo’” (Appeals Chamber), No. ICC-01/04-01/06-824 OA7, 13 February 2007, para. 68; the “Order on the application on behalf of victims a/1646/10 and a/1647/10 for leave to reply” (Trial Chamber IV), No. ICC-02/05-03/09-242, 31 October 2011, para. 3; the “Decision on the ‘Requête aux fins d’être autorisés à soumettre un Addendum’” (Trial Chamber IV), No. ICC-02/05-03/09-304, 6 March 2012, para. 6; and the “Public Redacted Version - Decision on the Request for Disqualification of the Prosecutor in the Investigation against Mr David Nyekorach-Matsanga” (Appeals Chamber), No. ICC-01/09-96-Red OA2, 6 September 2012, para. 21.

¹⁴ See the “Decision on application for leave to reply to Defence observations on the annexes to Prosecution filing ICC-02/05-03/09-517-Red (ICC-02/05-03/09-529-Conf) and related matters” (Trial Chamber IV), No. ICC-02/05-03/09-540, 10 February 2014, para. 10.

¹⁵ See the Request, *supra* note 7, paras. 28-29, 31-33, 35-37, 39-41, 43 and 46-48.