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TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

Public Document

Prosecution application for leave to reply to Defence response ICC-02/11-01/11-765

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. Pursuant to regulation 24(5) of the Regulations of the Court ("RoC"), the Prosecution ("Prosecution" or "OTP") requests leave to reply to the Defence response ("Response")¹ to the Prosecution's request to join the cases of the *Prosecutor v. Laurent Gbagbo* and the *Prosecutor v. Charles Blé Goudé* ("Joinder Request").²
2. The Prosecution's reply would focus on a discrete portion of the Response addressing the interpretation and application of article 64(5) of the Rome Statute ("Statute") and rule 136 of the Rules of Procedure of Evidence ("Rules"). A limited and focused reply will assist Trial Chamber I ("Chamber") in reaching an informed decision.

Submissions

3. A decision on whether to grant a party leave to reply to a response pursuant to regulation 24(5) of the RoC is discretionary. While the provision does not set out specific criteria or standard to be met, Chambers of this Court have, as a matter of principle, granted leave to reply when the issue at stake is novel or of particular importance.³ In addition, Chambers have also taken into consideration the potential effect that the issue for which a party is seeking leave to reply may have on the upcoming decision.⁴
4. The Prosecution seeks leave to reply to the Defence's restrictive interpretation and application of the relevant law on the joinder of cases (article 64(5) of the Statute and rule 136 of the Rules) as set out in Part 2 and applied in Part 3 of the Response. The Prosecution will demonstrate that this interpretation of the law is

¹ ICC-02/11-01/11-765.

² ICC-02/11-01/11-738.

³ See for instance, ICC-01/04-01/07-3382, para.8; ICC-01/04-01/07-1004, para.3, p. 4.

⁴ ICC-01/04-01/10-61, p.4.

erroneous, and that its application could lead to an outcome that is inconsistent with the intention of the drafters of these provisions.

5. The interpretation and application of the law on joinder pursuant to article 64(5) and rule 136 remains a novel issue before this Court in spite of the prior joinder decision in the *Ngudjolo and Katanga* case.⁵ Moreover, because the Chamber's determination on whether to join the cases against Mr Gbagbo and Mr Blé Goudé may to a large extent depend on the interpretation and application of the applicable law, the issue for which the Prosecution seeks leave to reply is also of particular importance and may have a significant effect on the outcome of the upcoming decision on the Prosecution's Joinder Request.
6. If leave to reply is granted, the Prosecution undertakes to address this discrete issue concisely and without repeating the arguments presented in its Joinder Request.

Conclusion

7. For the above reasons, the Prosecution requests that the Chamber grant it leave to reply to the Response, pursuant to regulation 24(5) of the RoC.



Fatou Bensouda, Prosecutor

Dated this 17th day of February 2015

At The Hague, The Netherlands

⁵ See ICC-01/04-01/07-307.