

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-02/11-01/15

Date: 24 June 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuca
Judge Bertram Schmitt

SITUATION IN CÔTE D'IVOIRE

IN THE CASE OF
THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ

Public Document

Application for leave to reply to Defence responses
ICC-02/11-01/15-98 and ICC-02/11-01/15-100

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 15 December 2014, the Single Judge of Trial Chamber I (the “Single Judge”) adopted the redaction regime to be followed in the case of *The Prosecutor v. Laurent Gbagbo*, and set it out in a redaction protocol (the “Redaction Protocol”).¹

2. On 11 March 2015, Trial Chamber I (the “Chamber”) ordered the joinder of the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé*, deciding *inter alia* that all decisions and orders issued in both cases shall continue to apply, as appropriate and until ordered otherwise, in the joint case.²

3. Between 11 May and 3 June 2015, the Prosecution informed the Common Legal Representative of the eventual disclosure to the Defence teams of Mr. Gbagbo and Mr. Blé Goudé of the applications of 19 dual status individuals as material pursuant to rule 77 of the Rules of Procedure and Evidence, in compliance with the “Order setting the commencement date for trial” issued by the Chamber on 7 May 2015.³

4. On 8 June 2015, the Principal Counsel of the Office of Public Counsel for Victims, acting as Common Legal Representative of the victims admitted to participate in the proceedings (the “Common Legal Representative”),⁴ filed a request to maintain redactions to the identifying and contact information of the

¹ See the “Protocol establishing a redaction regime in the case of *The Prosecutor v. Laurent Gbagbo*” (Pre-Trial Chamber I), No. ICC-02/11-01/11-737-AnxA, 15 December 2014 (the “Redaction Protocol”).

² See the “Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters” (Trial-Chamber I), No. ICC-02/11-01/15-1, 11 March 2015, paras. 68 and 74.

³ See the “Order setting the commencement date for trial” (Trial Chamber I), No. ICC-02/11-01/15-58, 07 May 2015, para. 22.

⁴ See the “Decision on victim participation” (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015, para. 61.

intermediaries mentioned in the applications of dual status individuals to be disclosed by the Prosecution (the “Request”).⁵

5. On the same date, the Prosecution disclosed to the Defence teams of Mr. Gbagbo and Mr. Blé Goudé 19 items pursuant to rule 77 of the Rules of Procedure and Evidence corresponding to the applications for participation of 19 dual status witnesses, with some redactions marked “B.3. LRV” pursuant to the Request.⁶

6. On 23 June 2015, the Defence teams of Mr. Gbagbo and Mr. Blé Goudé filed their responses to the Request, opposing it (the “Responses”).⁷

II. REQUEST FOR LEAVE TO REPLY

7. Pursuant to regulation 24(5) of the Regulations of the Court, the Common Legal Representative requests leave to reply to the Responses.

8. Acknowledging the right of the Accused to be tried without undue delay pursuant to article 67(1)(c) of the Rome Statute, the Common Legal Representative exceptionally files this request for leave to reply, on the basis of the extremely sensitive nature of the issues under consideration for her clients’ interests. The dual status individuals wish to serve the Court as witnesses, but without jeopardising their own security and well-being and without negatively affecting the participation of other victims who will not be called to testify.

⁵ See the “Request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the applications of dual status individuals”, No. ICC-02/11-01/15-85, 08 June 2015.

⁶ See the “Prosecution’s Communication of Evidence Disclosed to the Defence on 8 June 2015”, No. ICC-02/11-01/15-86, 09 June 2015, paras. 1 and 3.

⁷ See the “Réponse de la Défense à la «Request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the application of dual status individuals» (ICC-02/11-01/15-85) déposée par la Représentante légale des victimes le 8 juin 2015”, No. ICC-02/11-01/15-98, 23 June 2015 (the “*Gbagbo* Response”); and the “Defence Response to the “Request to maintain redactions to the identifying and contact information of intermediaries mentioned in the applications of dual status individuals” (ICC-02/11-01/15-85)”, No. ICC-02/11-01/15-100, 23 June 2015 (the “*Blé Goudé* Response”).

9. The Common Legal Representative is aware of the fact that a decision on whether to grant leave to reply to a response pursuant to regulation 24(5) of the Regulations of the Court is discretionary. While said provision does not set out specific criteria or standards 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,⁸ also taking into consideration the potential effect that the issue for which a participant is seeking leave to reply may have on the upcoming decision.⁹

10. On this basis, the Common Legal Representative seeks leave to reply to three concrete and limited issues related to the admissibility of the Request, namely (i) the alleged lack of impact of the disclosure of the intermediaries' identities on the victims' interests,¹⁰ (ii) the Common Legal Representative's alleged lack of legal standing to request the maintenance of redactions in the current scenario,¹¹ and (iii) the alleged limitations imposed on the Common Legal Representative by the Redaction Protocol.¹²

11. The Common Legal Representative will demonstrate that, contrary to the arguments of the Defence, the victims authorised to participate in this case have a self-evident interest in any decision as to whether the identities of the intermediaries who helped them in filling in their applications for participation are disclosed

⁸ See for instance the "Décision sur la requête de la Défense de Germain Katanga aux fins de déposer une réplique (norme 24 du Règlement de la Cour)" (Trial Chamber II), No. ICC-01/04-01/07-1004, 27 March 2009, para. 3; and the "Decision granting leave to reply" (Trial Chamber II), No. ICC-01/04-01/07-3382, 06 June 2013, para. 8.

⁹ See the "Decision on the Defence request to File a Reply to the Prosecution's Response to the 'Conclusion de la défense quant aux divulgations des documents expurgées par le Procureur'" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/06-236, 02 August 2006, p. 2; and the "Decision on the Prosecution's request for leave to reply to the 'Defence Response to Prosecution's Request for the Review of Potentially Privileged Material'" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/10-61, 24 February 2011, p. 4.

¹⁰ See the *Gbagbo* Response, *supra* note 7, para. 25.

¹¹ See the *Gbagbo* Response, *supra* note 7, paras. 12, 14, 19, 26 and 44; and the *Blé Goudé* Response, *supra* note 7, paras. 12, 24-27 and 43.

¹² See the *Gbagbo* Response, *supra* note 7, paras. 13 and 22; and the *Blé Goudé* Response, *supra* note 7, para. 34.

pursuant to Rule 77 of the Rules of Procedure and Evidence. She will also show that she has legal standing to protect said interests before the Chamber by means of a request to maintain redactions in the current circumstances. In fact, the Prosecution seems to narrowly interpret its obligations to redact and mechanisms for the exchange of information on individuals with dual status have still not been adopted by the Chamber, but a practice has developed before the Court whereby Legal Representatives of Victims usually interact with the parties on issues affecting the security and well-being of their clients. Lastly, the Common Legal Representative will contest the restrictive reading of the Redaction Protocol made by the Defence, a reading which leaves aside the obligation arising from the Rome Statute for all parties and participants to take appropriate measures to ensure the protection of victims and witnesses at all times.

12. The interpretation and application of the law regulating redactions to the identities of intermediaries is not an entirely novel issue, but the possibility for a Legal Representative of Victims to request the maintenance of redactions to said identities within the framework of the Prosecution's disclosing obligations is indeed new. Because the Defence challenged the admissibility of the Request, the maintenance of said redactions will to a large extent depend on the Chamber's determination of this issue. As such, the issues for which the Common Legal Representative seeks leave to reply are of particular importance and may have a significant effect on the outcome of the upcoming decision.

13. If leave to reply is granted, the Common Legal Representative undertakes to address these discrete issues concisely and without repeating the arguments presented in the Request.

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Chamber to grant her leave to reply to the Responses, pursuant to regulation 24(5) of the Regulations of the Court in a time limit established by the Chamber.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 24th day of June of 2015

At The Hague, The Netherlands