

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

SITUATION IN CÔTE D'IVOIRE

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

Public Document

Motion to strike document ICC-02/11-01/15-482 from the case record

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. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)¹ submits that the response by the Defence of Mr Gbagbo (the “Defence’s Response”) to the Legal Representative’s “Response to ICC-02/11-01/15-465 and request to maintain certain redactions in the victim applications of dual status individuals” should be dismissed *in limine*. The Defence advances its arguments in response to the Legal Representative’s response without having obtained the prior leave from the Chamber as required by Regulation 24(5) of the Regulations of the Court.

II. Background

2. On 18 March 2016, the Prosecution filed a request seeking authorisation to lift redactions in the application forms of nine dual status individuals previously disclosed to the Defence with redactions to the identifying information of intermediaries and/or third parties who assisted said individuals during the application process (the “Prosecution’s Request”).²

3. On 29 March 2016, the Legal Representative filed her response to the Prosecution’s Request, together with a request to maintain certain redactions in the victim applications of four additional dual status individuals (the “Legal Representative’s Response”).³

¹ See the “Decision on victim participation” (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015; and the “Decision on victims’ participation status” (Trial Chamber I), No. ICC-02/11-01/15-379, 7 January 2016, p. 23.

² See the “Prosecution request for the lifting of certain redactions in the victim applications of nine dual status witnesses”, No. ICC-02/11-01/15-465, 18 March 2016 (the “Prosecution’s Request”).

³ See the “Response to ICC-02/11-01/15-465 and request to maintain certain redactions in the victim applications of dual status individuals”, No. ICC-02/11-01/15-473, 29 March 2016 (the “Legal Representative’s Response”).

4. On the same day, the Gbagbo Defence filed a response to the Prosecution's Request.⁴

5. On 6 April 2016, the Prosecution filed a response to the request contained in the Legal Representative's Response (the "Prosecution's Response").⁵

6. On 7 April 2016, the Gbagbo Defence filed its Response.⁶

III. Submissions

7. The Legal Representative submits that the Defence's Response is purportedly limited to the Legal Representative's request to maintain certain redactions in the victim applications forms of dual status individuals a/25130/15 (P-0442), a/20094/13 (P-0489), a/10179/14 (P-0350) and a/10228/14 (P-0188) ("*C'est à cette dernière requête qu'il est répondu ici*").⁷

8. However, the Defence's Response addresses the arguments submitted by the Legal Representative in her *response* to the Prosecution's Request,⁸ without addressing the *request* concerning the said four dual status individuals. In fact, the Defence's Response generally refers to "[l]a question, discutée ici, de la divulgation à la Défense des informations d'identification des intermédiaires qui sont aussi témoins du

⁴ See the "Version publique expurgée de la «Réponse de la Défense à la «Prosecution request for the lifting of certain redactions in the victim applications of nine dual status witnesses» (ICC-02/11-01/15-465) et requête de la Défense aux fins de la levée de ces mêmes expurgations dans toutes les demandes de participation des victimes lorsqu'elles portent sur l'identité d'intermédiaires qui sont en même temps témoins de l'Accusation», No. ICC-02/11-01/15-474-Red, 29 March 2016.

⁵ See the "Prosecution response to the Office of Public Counsel for Victims' "Response to ICC-02/11-01/15-465 and request to maintain certain redactions in the victim applications of dual status individuals" (ICC-02/11-01/15-473)", No. ICC-02/11-01/15-481, 6 April 2016 (the "Prosecution's Response").

⁶ See the "Réponse de la Défense à la «Response to ICC-02/11-01/15-465 and request to maintain certain redactions in the victim applications of dual status individuals» (ICC-02/11-01/15-473)", No. ICC-02/11-01/15-482, 7 April 2016 (the "Defence's Response").

⁷ *Idem*, para. 14.

⁸ See the Defence's Response, *supra* note 6, especially paras. 31-33, 38-39, 42-46 and 48-49.

Procureur”,⁹ and broadly concludes that “[i]l convient de rejeter la demande de la RLV en maintien des expurgations des informations permettant d’identifier dans les demandes de participation de victimes à double statut les intermédiaires qui sont aussi des témoins du Procureur”.¹⁰

9. As a consequence, the Defence’s Response is nothing more than a reply to the Legal Representative’s Response and must be dismissed *in limine* for having been filed without the prior leave of the Chamber required by Regulation 24(5) of the Regulations of the Court.¹¹

10. The fact that the Defence’s Response addresses the response contained in the Legal Representative’s Response, instead of the request also contained therein, is further evidenced by the fact that the Defence makes reference to arguments advanced by the Defence in its prior response to the Prosecution’s Request.¹² Said request addressed nine applications of dual status individuals different from the four applications dealt with in the request contained in the Legal Representative’s Response.¹³

11. By contrast, the Legal Representative notes that the Prosecution’s Response addressed only the four applications dealt with in the “request component” of the Legal Representative’s Response.¹⁴ As a consequence, the Legal Representative does not seek the dismissal *in limine* of the Prosecution’s Response, although she notes that

⁹ *Idem.*, para. 34.

¹⁰ *Ibid.*, para. 50.

¹¹ 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. See also the “Decision on defence request for leave to reply to ‘Prosecution’s response to ‘Defence request for interim relief’” (Trial Chamber III), No. ICC-01/05-01/08-2985, 19 February 2014, para. 5.

¹² See the Defence’s Response, *supra* note 6, para. 27.

¹³ Cf. the Prosecution’s Request, *supra* note 2, para. 1, and the “Annex A to the Prosecution request for the lifting of certain redactions in the victim applications of nine dual status witnesses”, No. ICC-02/11-01/15-465-Conf-AnxA, 18 March 2016, with the Legal Representative’s Response, *supra* note 3, para. 46.

¹⁴ See the Prosecution’s Response, *supra* note 5, paras. 1-3.

said response also includes arguments not previously submitted by the Prosecution in its original request for authorisation to lift redactions.¹⁵

IV. Conclusion

12. For the foregoing reasons, the Legal Representative respectfully requests that the Chamber dismisses the Defence's Response without entertaining its merits and strike it from the case record.



**Paolina Massidda
Principal Counsel**

Dated this 8th day of April of 2016

At Kampala, Uganda

¹⁵ *Idem*, paras. 10-11.