

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 8 April 2016

TRIAL CHAMBER I

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

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO and
CHARLES BLÉ GOUDÉ***

Public Document

Defence Response to the "Motion to strike document ICC-02/11-01/15-482 from the case record" (ICC-02/11-01/15-483) filed by the LRV on 8 April 2016

Source: Defence Team for Laurent Gbagbo

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

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Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural history

1. On 18 March 2016, the Prosecution filed the “Prosecution request for the lifting of certain redactions in the victim applications of nine dual status witnesses”.¹ It sought the lifting of the redactions applied to the names and contact information of intermediaries in nine applications for participation of victims who are also Prosecution witnesses. The Prosecution asserted that it had realised only shortly before filing the request that some of its witnesses were intermediaries who had played a role in the participation of certain dual-status victims in the proceedings. Consequently, to give the Defence all relevant information concerning these witnesses/intermediaries, the Prosecution requested that the redactions concerning those intermediaries be lifted.

2. On 29 March 2016, the Defence responded to the Prosecution’s request.² It invited the Chamber to grant the Prosecution’s request and asked it to order the lifting of the redactions applied to the identifying information of those intermediaries who are also Prosecution witnesses in the applications for participation of dual-status witnesses. In addition, the Defence requested that the redactions applied to this identifying information also be removed from all of the applications for participation of victims, and not only the applications of dual-status victims.

3. The same day, the Legal Representative of Victims (LRV) filed a “Response to ICC-02/11-01/15-465 and request to maintain certain redactions in the victim applications of dual status individuals”.³ This document from the LRV was both a response to the Prosecution request filed on 29 March 2016 and a new request for the Chamber to maintain the redactions to the identifying information of the intermediaries mentioned in the dual-status victims’ applications for participation that were not covered by the Prosecution’s initial request.

¹ ICC-02/11-01/15-465.

² ICC-02/11-01/15-474-Conf.

³ ICC-02/11-01/15-473.

4. On 7 April 2016, the Defence responded to this new request filed by the LRV,⁴ but not the response proper.

II. Discussion

5. In its submission number 473 dated 29 March 2016, the LRV (1) responded by opposing the Prosecution's request to lift the redactions to the names of the intermediaries of the victims who are also Prosecution witnesses in nine applications for participation of dual-status victims, and (2) presented a new request to maintain the redactions to the names and identifying information of the intermediaries who are also Prosecution witnesses in four additional applications for participation of dual-status victims that were not covered by the Prosecution request. Because the second part of the LRV's submission constituted a "request" within the meaning of the Statute, it is naturally subject to the Defence's right to respond.

6. The problem is that, to support her request, the LRV relies on and expressly references the arguments advanced in the first part of the submission, i.e. in her response to the Prosecution's request: "**In light of the arguments *supra***, the Legal Representative requests that the existing redactions to the identifying information of the intermediaries mentioned in the application forms of dual status individuals a/25130/15 (P-0442), a/20094/13 (P-0489) and a/10179/14 (P-0350) respectively disclosed by the Prosecution on 18, 21 and 22 March 2016, be maintained".⁵

7. In these circumstances, it is clear that, in order to respond to the LRV's request, the Defence must respond to these arguments and therefore analyse the first part of the submission. If the adversarial principle is to be upheld, what is important in this situation is that the Defence is able to provide a detailed and well-reasoned response to the LRV's request. It matters little that the LRV's arguments were set forth in another part of the document.

8. The LRV's decision that it was appropriate to set forth its substantive arguments in the "response" component of the submission, and simply refer to those arguments in the "request" component of the submission, cannot be relied on as a

⁴ ICC-02/11-01/15-482.

⁵ ICC-02/11-01/15-473, para. 46.

basis for prohibiting the Defence from exercising its right to respond to the arguments advanced in support of the request. If that were the case, the adversarial nature of the proceedings – and hence their fairness – would be compromised.

9. Therefore, the LRV's vexatious motion must be dismissed.

FOR THESE REASONS, MAY IT PLEASE TRIAL CHAMBER I TO:

- **Dismiss** the LRV's motion seeking the dismissal *in limine* of the Defence's response.

[signed]

Emmanuel Altit

Lead Counsel for Laurent Gbagbo

Dated this 8 April 2016

At The Hague, the Netherlands