

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

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

Date: **27 January 2015**

TRIAL CHAMBER I

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

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

Public

**Response of the Common Legal Representative
to the "Request for the interim suspension of the effects of the Single Judge's decision
of 19 January 2015 (ICC-02/11-01/11-749) – authorising the Registry to transmit to the
Legal Representative of victims all documents included in the case record as well as rule
77 material not included in the case record – until the Chamber rules on the Defence's
application for leave to appeal the decision and, if leave is granted, while appellate
proceedings are pending"**

Source: Office of Public Counsel for Victims

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

Office of the Prosecutor

Ms Fatou Bensouda

Mr Eric MacDonald

Counsel for the Defence

Mr Emmanuel Altit

Legal Representatives of Victims

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparations)**

Office of Public Counsel for Victims

Ms Paolina Massidda

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Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar and Deputy Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. PROCEDURAL HISTORY

1. On 20 November 2014, the Single Judge of Trial Chamber I (the “Chamber”) ordered the notification to the Common Legal Representative of Victims (the “Legal Representative”) of certain confidential documents in the case record.¹
2. On 21 November 2014, the Defence filed a submission in which it informed the Chamber of its objection to the notification of these documents to the Legal Representative.²
3. On 24 November 2014, the Legal Representative filed a response to the Defence submission.³
4. On 19 January 2015, the Single Judge issued a decision on access to the said documents (the “Decision”) confirming his previous order and instructing the Registry to notify the documents concerned to the Legal Representative.⁴
5. On 26 January 2015, the Defence filed an application for leave to appeal the Decision.⁵
6. On 27 January 2015, the Defence filed a request for the effects of the Decision to be suspended (the “Defence Request”).⁶

¹ See the “Order on the notification of confidential filings to the Legal Representative of victims”, ICC-02/11-01/11-724, 20 November 2014.

² See the “*Observations de la Défense quant à la nécessité de préserver le niveau de classification de certains des documents mentionnés par le Juge unique comme devant être transmis au Représentant légal des victimes*”, ICC-02/11-01/11-725-Conf, 21 November 2014.

³ See the “Response of the Common Legal Representative of victims to the ‘*Observations de la Défense quant à la nécessité de préserver le niveau de classification de certains des documents mentionnés par le Juge unique comme devant être transmis au Représentant légal des victimes*’”, ICC-02/11-01/11-728-Conf, 24 November 2014.

⁴ See the “Decision on the Legal Representative of Victims’ access to certain confidential filings and to the case record”, ICC-02/11-01/11-749, 19 January 2015.

⁵ See the “*Demande d’autorisation d’interjeter appel de la décision du Juge Unique ‘on the Legal Representative of Victims’ access to certain confidential filings and to the case record’* (ICC-02/11-01/11-749) delivered on 19 January 2015”, ICC-02/11-01/11-752, 26 January 2015.

⁶ See the “Request for the interim suspension of the effects of the Single Judge’s decision of 19 January 2015 (ICC-02/11-01/11-749) – authorising the Registry to transmit to the Legal Representative of victims all documents included in the case record as well as rule 77 material not included in the case record – until the Chamber rules on the Defence’s application for leave to appeal the decision and, if leave is granted, while appellate proceedings are pending”, ICC-02/11-01/11-753, 27 January 2015.

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

II. OBSERVATIONS OF THE LEGAL REPRESENTATIVE

8. The Legal Representative calls on the Chamber to dismiss the Defence Request on the grounds that it is unfounded.

9. She observes that the Court's core texts do not provide for requests for the suspension of a trial chamber decision. Article 82(3) of the Rome Statute states that "[a]n appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders" and refers only to decisions for which leave to appeal has been granted or to interlocutory decisions that may be appealed without the permission of the Chamber that delivered them.

10. Trial Chamber V(a) has specified that:

Any request for suspensive effect of interlocutory appeal proceedings should be made with the Appeals Chamber, which, at the relevant time, can decide whether to entertain such a request to use its discretionary power to grant suspensive effect. This part of the relief requested is therefore rejected.⁷

11. The Legal Representative notes, moreover, that neither Rule 39 of the Rules of Court of the European Court of Human Rights (the ECtHR) nor Article 13 of the European Convention on Human Rights – cited by the Defence in its Request – apply in this case.

11. In its Judgment in the case of *Mamatkulov and Askarov v. Turkey*, to which the Defence refers in support of its Request, the Grand Chamber of the ECtHR clearly emphasised that:

⁷ See the "Decision on defence applications for leave to appeal the 'Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation' and the request of the Government of Kenya to submit *amicus curiae* observations", Trial Chamber V(a), ICC-01/09-01/11-1313, 23 May 2014, para. 38. See also the "Decision on the Defence and Prosecution Requests for Leave to Appeal the Decision on Victims' Participation of 18 January 2008", Trial Chamber I, ICC-01/04-01/06-1191, 27 February 2008, para. 55, and the "Decision on the prosecution request for leave to appeal the 'Decision on Intermediaries'", Trial Chamber I, ICC-01/04-01/06-2463, 2 June 2010, paras. 35-36.

Interim measures have been indicated only in limited spheres. Although it does receive a number of requests for interim measures, in practice the Court applies Rule 39 only if there is an imminent risk of irreparable damage. While there is no specific provision in the Convention concerning the domains in which Rule 39 will apply, requests for its application usually concern the right to life (Article 2), the right not to be subjected to torture or inhuman treatment (Article 3) and, exceptionally, the right to respect for private and family life (Article 8) or other rights guaranteed by the Convention. The vast majority of cases in which interim measures have been indicated concern deportation and extradition proceedings.⁸

12. The Defence Request for suspension of the transmission of documents clearly does not correspond to one of the scenarios covered by Rule 39 envisaged by the ECtHR itself. In the present case, no “irreparable damage” within the meaning of ECtHR case-law could be caused.

13. Furthermore, in accordance with established ECtHR case-law, the protection offered by Article 13 of the European Convention on Human Rights is not absolute, and implicit limits on possible remedies may arise.⁹ All this provision guarantees is the existence of a possible remedy for an “arguable grievance” as provided by the applicable law:

However, Article 13 cannot reasonably be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be: the grievance must be an arguable one in terms of the Convention.¹⁰

14. Since the Court’s applicable law makes no provision for requesting the suspension of a trial chamber decision, the Defence cannot rely on guarantees of the right to an effective remedy within the meaning of Article 13 of the European Convention on Human Rights.

⁸ See ECtHR, *Mamatkulov and Askarov v. Turkey*, Application Nos. 46827/99 and 46951/99, Judgment of 4 February 2005, para. 104.

⁹ See ECtHR, *Kudła v. Poland*, Application No. 30210/96, Judgment of 26 October 2000, para. 151.

¹⁰ See ECtHR, *Shamayev and Others v. Georgia and Russia*, Application No. 36378/02, Judgment of 12 April 2005, para. 444.

For these reasons, the Legal Representative respectfully calls on the Chamber to dismiss the Defence Request.

[signed]

Paolina Massidda
Principal Counsel

Dated this 27 January 2015
At The Hague, the Netherlands