

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 10 January 2018

TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Confidential

Prosecution's request for leave to respond to *Demande d'autorisation d'intervenir comme amicus curiae dans l'affaire le Procureur c. Laurent Gbagbo et Charles Blé Goudé*, 18 December 2017, (ICC-02/11-01/15-1093-Conf-Anx1), and request for dismissal *in limine* of substantive observations contained therein

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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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Frontières (ADASF)

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

Introduction

1. The Prosecution firstly seeks leave to respond to the Request for leave to submit observations filed by the group *Avocats et Démocrates Africains Sans Frontières* ("ADASF") on 18 December 2017 ("Request").¹ If such leave is granted, the Prosecution will file a response opposing the Request.
2. The Prosecution secondly requests that the substantive observations impermissibly contained within the Request be dismissed *in limine*.²

Confidentiality

3. This submission is filed as "Confidential", pursuant to regulation 23bis(2) of the Regulations of the Court, as it responds to a document filed with the same classification.

Submissions

Leave to submit response to Request

4. The Appeals Chamber has stated that "... under the express wording of rule 103(1) of the Rules, the Prosecutor is not entitled to respond to an application under rule 103(1)," and that such responses may not be filed without leave.³
5. The Prosecution seeks leave from the Chamber to respond to the Request. The Request, filed for the stated purpose of allowing ADASF to request an "*annulation de la procédure*" against Mr Gbagbo,⁴ has no genuine *amicus curiae* (friend of the Court) function as it does not assist with the resolution of any issue before the Chamber. Rather, it seeks to

¹ ICC-02/11-01/15-1093-Conf-Anx1, transmitted by the Registry on 5 January 2018 (ICC-02/11-01/15-1093-Conf).

² Namely, paras. 9-62 of the Request and all annexes (ICC-02/11-01/15-1093-Conf-Anx2 through to ICC-02/11-01/15-1093-Conf-Anx12).

³ ICC-02/05-01/09-51, para. 8. *See also* ICC-01/05-01/08-602, para. 7; ICC-02/11-01/12-25, para. 11.

⁴ Request, p. 12 (immediately after para. 62).

substitute Defence Counsel by raising issues currently not before the Chamber. If leave is granted, the Prosecution would file a concise response containing its reasons for opposing the Request.

Dismissal of substantive observations contained in the Request

6. The Appeals Chamber has stated that "... the submission of substantive observations is only permissible after a Chamber has decided to invite or grant leave to do so."⁵ While premature submissions have nevertheless been accepted by Trial Chamber V(A) in the *Prosecutor v. Ruto & Sang* case "on an exceptional basis",⁶ the Appeals Chamber has disregarded such submissions.⁷

7. The Request in the present case contains substantive observations from paragraphs 9 to 62, along with supporting media articles contained in Annexes 2-12. The Prosecution challenges such observations and further submits that there is no exceptional basis upon which to accept these observations and supporting articles. The Prosecution requests that they be dismissed *in limine*.

8. If the Request was to be granted, and the substantive observations exceptionally accepted, the Prosecution intends to respond to the observations as it is entitled to do under rule 103(2) of the Rules of Procedure and Evidence.

Conclusion

9. For the foregoing reasons, the Prosecution seeks:

- i) leave to respond to the Request; and

⁵ ICC-01/05-01/08-602, para. 9. *See also* ICC-01/09-01/11-1313, para. 35.

⁶ ICC-01/09-01/11-1313, para. 35.

- ii) dismissal *in limine* of paragraphs 9 to 62 of the Request as well as the supporting articles contained in Annexes 2-12 thereto.



Fatou Bensouda, Prosecutor

Dated this 10th day of January 2018,
at The Hague, The Netherlands

⁷ See ICC-01/05-01/08-602, para. 9.