



Original: English

No.: ICC-02/11-01/15
Date: 13 February 2018

TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

PUBLIC

Public redacted version of "Prosecution's request for preliminary directions related to preparations for the presentation of evidence by the Defence, for a time limit on Defence requests and/or for a Status Conference", 26 January 2018, ICC-02/11-01/15-1113-Conf

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Eric MacDonald

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

Legal Representatives of the Victims

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution requests preliminary directions related to preparations for the presentation of evidence by the Defence for Mr Gbagbo (“Gbagbo Defence”) and the Defence for Mr Blé Goudé (“Blé Goudé Defence”) (together, “the Defence”) and a time limit for any Defence requests for relief that are likely to have an impact on the trial schedule. Further or alternatively, the Prosecution requests the scheduling of a Status Conference.
2. Specifically, the Prosecution requests first, that the Trial Chamber order, pursuant to rules 78 and 79(4) of the Rules of Procedure and Evidence (“Rules”) and, regulation 54 of the Regulations of the Court (“Regulations”), that the Defence each disclose, on a rolling basis, all material in their possession or control falling under rule 78 of the Rules; and that the Defence each file, by the end of February 2018, a preliminary list of witnesses, and an estimate of how many hours of witness examination they will require. Second, the Prosecution requests that the Defence each file, by a date to be set by the Chamber, any requests for relief that are likely to have an impact on the commencement of their cases. Third, or in the alternative, the Prosecution requests the scheduling of a Status Conference, in order to address these and further directions related to preparations for the presentation of evidence by the Defence.
3. The Prosecution makes this request in order to avoid unnecessary delays in the commencement and progress of the Defence cases, to facilitate the preparations of the Parties and participants, and to assist the Chamber in ensuring the fair and expeditious conduct of the trial pursuant to article 64(2) of the Statute.
4. The Prosecution notes, and recognises, that, for purposes of the confirmation hearing, both the Gbagbo and Blé Goudé Defence disclosed [REDACTED].

Confidentiality

5. This request is filed confidentially pursuant to regulation 23*bis*(1) of the Regulations, since it refers to the content of other, confidential filings.

Background

6. On 3 September 2015, the Trial Chamber issued its first “Directions on the conduct of the proceedings.”¹ These required, *inter alia*, that the Defence notify the Prosecution of its intent to raise the existence of an alibi or grounds for excluding criminal responsibility sufficiently in advance to enable the Prosecution to adequately prepare and respond. The Chamber invited the Defence to provide this notification, if any, prior to the start of trial, noting, however, that “Rule 79 of the Rules specifically provides that failure by the Defence to provide such notice shall not limit its right to raise such matters and to present evidence thereon.”² The First Directions on Conduct also provided: “The Chamber considers that disclosure by the Defence shall be notified to the Chamber, parties and the LRV 14 days prior to the commencement of the presentation of evidence by the Defence. Further directions on the scope of Defence disclosure will be provided in due course.”³
7. On 4 May 2016, the Trial Chamber adopted its amended and supplemented directions on the conduct of the proceedings,⁴ which replaced and superseded “in their entirety” the First Directions on Conduct.⁵ These make no specific provision for the presentation of evidence by the Defence.
8. On 23 January 2017, the Trial Chamber issued its “Order requesting the parties and participants to submit information for the purposes of the conduct of the proceedings pursuant to article 64(2) of the Statute and rule 140 of the Rules of

¹ Directions on the conduct of the proceedings, 3 September 2015, ICC-02/11-01/15-205 (“First Directions on Conduct”).

² First Directions on Conduct, para. 13.

³ First Directions on Conduct, para. 14.

⁴ ICC-02/11-01/15-498-AnxA (“Revised Directions on Conduct”).

⁵ Decision adopting amended and supplemented directions on the conduct of the proceedings, 4 May 2016, ICC-02/11-01/15-498, para. 14.

Procedure and Evidence”, in which it, *inter alia*, invited the Defence to provide, no later than 10 February 2017, information as to the amount of time they expect to require in making their case, including – to the extent feasible – an overall estimate of the number of witnesses they envisage to call, and an indication whether they will be requesting a suspension of the proceedings before starting with the presentation of their own case, and, in the affirmative, an approximate estimate of the duration of such suspension.⁶

9. On 10 February 2017, the Gbagbo Defence filed their “*Observations de la Défense en réponse à l’ordonnance de la Chambre du 23 janvier 2017 intitulée « Order requesting the parties and participants to submit information for the purposes of the conduct of the proceedings pursuant to article 64(2) of the Statute, »*”⁷ in which it was stated, *inter alia*, that it was, then, difficult for the Defence to quantify the time it would need at the end of the presentation of the Prosecution case,⁸ and that it was only once: “*l’analyse globale du cas définitif du Procureur effectuée [...] et les enquêtes sur le terrain complétées [...] que la Défense sera véritablement en mesure de donner à la Chambre des indications claires et précises tant sur le nombre de témoins qu’elle pourra appeler que sur la durée de la présentation de ses moyens de preuve.*”⁹ Also on 10 February 2017, the Blé Goudé Defence filed their “Blé Goudé submission of information pursuant to Order ICC-02/11-01/15-787,”¹⁰ in which they stated, *inter alia*, that preliminary Defence investigations had identified 15 potential Defence witnesses, one of whom was an expert witness, but that it was expected that this preliminary assessment, in light of the stage of the Prosecution’s case, might change.¹¹
10. On 28 August 2017, the Presiding Judge requested the “Defence teams to indicate approximately the number of witnesses they envisage to call and to indicate

⁶ Order requesting the parties and participants to submit information for the purposes of the conduct of the proceedings pursuant to article 64(2) of the Statute and rule 140 of the Rules of Procedure and Evidence, 23 January 2017, ICC-02/11-01/15-787, p. 6-7.

⁷ ICC-02/11-01/15-806.

⁸ ICC-02/11-01/15-806, para. 28.

⁹ ICC-02/11-01/15-806, para. 36.

¹⁰ ICC-02/11-01/15-805.

¹¹ ICC-02/11-01/15-805, para. 5.

whether they will be requesting a suspension for the proceedings before starting with the presentation of their evidence, and in the affirmative, the approximate length of the suspension requested.”¹²

11. On 2 October 2017, the Gbagbo Defence filed their [REDACTED].¹³ [REDACTED]¹⁴ [REDACTED].¹⁵ [REDACTED],¹⁶ [REDACTED].¹⁷ [REDACTED].¹⁸ [REDACTED];¹⁹ [REDACTED].²⁰ [REDACTED],²¹ [REDACTED].²² [REDACTED].²³ [REDACTED],²⁴ [REDACTED].²⁵
12. Also on 2 October 2017, the Blé Goudé Defence filed their [REDACTED],²⁶ [REDACTED].²⁷ [REDACTED],²⁸ [REDACTED].²⁹ [REDACTED]³⁰ [REDACTED];³¹ [REDACTED].³²
13. On 19 January 2018, the evidence of the last witness to be called as part of the presentation of the Prosecution case was concluded. The Chamber has indicated that it will issue a decision “in due course” on how the trial will continue.³³

Submissions

Preliminary directions

14. First, the Prosecution requests preliminary directions following the conclusion, on 19 January 2018, of the evidence of the last witness to be called as part of the

¹² ICC-02/11-01/15-T-181-ENG ET, p. 2, l. 17-20.

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ ICC-02/11-01/15-T-220-CINF-ENG ET, 19 January 2018, p. 91.

presentation of the Prosecution case, and in advance of the conclusion of the Prosecution's evidence presentation, pending final decisions from the Chamber on Prosecution requests related to the submission of its evidence.³⁴

15. Pursuant to rule 79(4) of the Rules and regulation 54 of the Regulations, and following the jurisprudence of Trial Chambers in other cases, the Chamber may set deadlines, issue orders and require information on the Defence presentation of evidence, including: a summary of the evidence the Accused intend to rely on; the number and identity (including any pseudonyms) of the witnesses to be called; the length of questioning of the witnesses; the issues the accused propose to raise during the trial; and disclosure of evidence.³⁵
16. Rule 78 of the Rules provides that the Defence must permit inspection of any books, documents, photographs and other tangible objects in its possession or control ("Rule 78 materials"), which are intended for use by it as evidence for the purposes of the trial. Rule 78 requires that the Defence should disclose and permit inspection by the Prosecution of any Rule 78 materials once a decision has been made to use the material at trial.³⁶

³⁴ Prosecution's request for an extension of time pursuant to regulation 35 of the Regulations of the Court and application to submit six documents under paragraph 43 of the Directions on the conduct of the proceedings (ICC-02/11-01/15-1091); Prosecution's application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of the proceedings (ICC-02/11-01/15-1092); Prosecution's supplemental submission of transcriptions of video evidence under paragraphs 43-44 of the directions on the conduct of the proceedings, 31 July 2017, ICC-02/11-01/15-998 (ICC-02/11-01/15-1089); Prosecution's application for the introduction of video evidence under paragraphs 43-44 of the directions on the conduct of the proceedings and notice that it will not call Witness P-0541 to testify (ICC-02/11-01/15-998); Prosecution's application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of the proceedings (ICC-02/11-01/15-895).

³⁵ Rule 79(4) of the Rules; Regulation 54 of the Regulations. *See Prosecutor v. Bosco Ntaganda*, Decision supplementing the Decision on the Conduct of Proceedings (ICC-01/04-02/06-619) and providing directions related to preparations for the presentation of evidence by the Defence, 30 January 2017, ICC-01/04-02/06-1757, para. 6. *See also Prosecutor v. Dominic Ongwen*, Preliminary Directions for any LRV or Defence Evidence Presentation, 13 October 2017, ICC-02/04-01/15-1021, para. 3; *Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, 3 November 2015, ICC-01/05-01/13-1450, para. 2; *Prosecutor v. Jean- Pierre Bemba Gombo*, Decision on defence disclosure and related issues, 24 February 2012, ICC-01/05-01/08-2141, p. 18; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the 'Prosecution's Application Concerning Disclosure by the Defence Pursuant to Rules 78 and 79(4)', 14 September 2010, ICC-01/04-01/07-2388, p. 23.

³⁶ *See Prosecutor v. Thomas Lubanga Dyilo*, Redacted Second Decision on disclosure by the defence and Decision on whether the prosecution may contact defence witnesses, 20 January 2010, ICC-01/04-01/06-2192-Red, para. 64; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the 'Prosecution's Application Concerning Disclosure by the Defence Pursuant to Rules 78 and 79(4)', 14 September 2010, ICC-01/04-01/07-2388, para. 50; *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on defence disclosure and related issues, 24 February 2012, ICC-01/05-01/08-2141, para. 17.

17. Given the stage of the proceedings, the Prosecution requests, pursuant to rules 78 and 79(4) of the Rules and regulation 54 of the Regulations, that the Defence are each ordered to provide (i) by the end of February 2018, a *preliminary* list of witnesses, and a *preliminary* estimate of how many hours of witness examination they will require; and (ii) disclosure, on a rolling basis, of any Rule 78 materials in their possession or control.
18. This request finds recent support in the *Ongwen* case, in which the Single Judge issued “Preliminary Directions for any LRV or Defence Evidence Presentation,” in advance of the conclusion of the Prosecution case (which is still ongoing), ordering, *inter alia*, that the Defence provide a preliminary list of witnesses and an estimate of how many hours witness examination it will require by 14 December 2017 (that is, before the close of the Prosecution case).³⁷ The Single Judge noted that “these lists are for informational purposes and may be changed up until the applicable deadlines for the final lists of witnesses.”³⁸
19. In this case, the Prosecution notes and recognises that, for the purposes of the confirmation hearings, the Gbagbo and Blé Goudé Defence teams each disclosed [REDACTED]. It is unclear, however, whether or not the Defence teams intend to rely upon this evidence for purposes of the trial.
20. Further, the Prosecution notes that both Defence teams have provided disclosure under rule 78 during the trial phase, in the context of their use of material in the questioning of Prosecution witnesses. That being said, only the Blé Goudé Defence have provided an indication [REDACTED]; they have also identified 15 potential Defence witnesses, including one expert witness. [REDACTED].
21. The provision of a *preliminary* list of witnesses, and a *preliminary* estimate of how many hours of witness examination the Defence will require, together with the provision of Rule 78 material on a rolling basis, will assist in ensuring a fair and

³⁷ *Prosecutor v. Dominic Ongwen*, Preliminary Directions for any LRV or Defence Evidence Presentation, 13 October 2017, ICC-02/04-01/15-1021, para. 3.

³⁸ *Ibid.*

expeditious trial. The disclosure of information regarding the identification of Defence witnesses will enable the Prosecution to prepare for those witnesses and the evidence expected from them, in a timely manner, thereby avoiding delays or adjournments of the proceedings. In addition, the provision of this information will facilitate the effective participation of the Legal Representatives of the Victims (“LRV”), and may also be relevant for the co-Accused in the preparation of their respective cases. Ordering Defence disclosure under rule 78 on a rolling basis, will similarly allow the Parties and participants an opportunity to adequately prepare. The provision of information as to projected hours of witness examination will allow the Chamber to ensure an efficient conduct of the proceedings.

Time limit for requests for relief likely to have an impact on the scheduling

22. Second, the Prosecution requests that the Gbagbo and Blé Goudé Defence each file, by a date to be set by the Chamber, any requests for relief that are likely to have an impact on the commencement of their cases. Such an order will assist in ensuring a fair and expeditious trial, avoiding the need for any delays or adjournments of the proceedings.

Status conference

23. Third, or in the alternative, in order to assist in ensuring a fair and expeditious trial, the Prosecution requests the scheduling of a Status Conference, in order to address the Prosecution’s requested preliminary directions, and any further directions related to preparations for the presentation of Defence evidence, pursuant to regulation 54 of the Regulations.

Conclusion

24. For the above reasons, the Prosecution requests that the Trial Chamber order:

- i. That the Gbagbo and Blé Goudé Defence each provide, by the end of February 2018, preliminary lists of evidence and witnesses, and an estimate of how many hours of witness examination they will require;
- ii. That the Gbagbo and Blé Goudé Defence each provide disclosure, on a rolling basis, of any Rule 78 materials in their possession or control;
- iii. That the Gbagbo and Blé Goudé Defence file, by a date to be set by the Chamber, any requests for relief that are likely to have an impact on the commencement of their respective cases;
- iv. Further, or alternatively, the scheduling of a Status Conference, in order to address the Prosecution's requested preliminary directions, and any further directions related to preparations for the presentation of Defence evidence.



Fatou Bensouda, Prosecutor

Dated this 13th day of February 2018

At The Hague, The Netherlands