

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **21 April 2020**

THE APPEALS CHAMBER

Before:

**Judge Chile Eboe-Osuji, Presiding
Judge Howard Morrison
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa**

SITUATION IN COTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ

Public

Blé Goudé Defence Response to the “Prosecution’s application to postpone or cancel the appeal hearing scheduled for 11-13 May 2020 and to consider alternative proposals to expedite the appeal” (ICC-02/11-01/15-1330)

Source: Defence of Mr Charles Blé Goudé

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

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I. INTRODUCTION

1. On 20 March 2020, the Appeals Chamber scheduled a court hearing for 11-13 May 2020¹ in the Prosecutor's appeal² against Trial Chamber I's acquittals of Mr Gbagbo and Mr Blé Goudé.³
2. On 17 April 2020, the Prosecution submitted its "application to postpone or cancel the appeal hearing scheduled for 11-13 May 2020 and to consider alternative proposals to expedite the appeal" ("Prosecution's Application").⁴
3. On 20 April 2020, the Common Legal Representative of the Victims submitted her response to the Prosecution's Application, agreeing with the suggestions made by the Prosecution regarding the proposed course of the proceedings.
4. The Defence of Mr Blé Goudé ("the Defence") hereby submits its response to the Prosecution's Application. The Defence wishes to inform the Appeals Chamber that it agrees in part with providing written submissions to the Appeals Chamber's questions according to the modalities detailed by the Prosecution. However, the Defence respectfully submits that the circumstances of this case militate in favour of holding an oral hearing on the issues on appeal because of the importance of the issues in addition to their novelty and complexity. Therefore, recourse to a teleconference hearing or any other substitute should not be considered

II. SUBMISSIONS

- a. *The Defence does not oppose the Prosecution's proposal to file written submissions to the Appeals Chamber's questions*

¹ ICC-02/11-01/15-1318, para. 1.

² ICC-02/11-01/15-1277-Red.

³ ICC-02/11-01/15-T-232-ENG ("Acquittals") and ICC-02/11-01/15-1263; ICC-02/11-01/15-1263-Anx1; ICC-02/11-01/15-1263-Anx2; ICC-02/11-01/15-1263-Anx3 ("Reasons").

⁴ ICC-02/11-01/15-1330.

5. In its Application, the Prosecution proposes that:

“The Appeals Chamber could direct the Parties and participants to respond to any questions it may have in writing. In recent oral appeal hearings, the Appeals Chamber has issued a set of questions prior to the appeal hearing which the Parties and participants have answered in the hearing. The difference in the proposed approach is that rather than presenting answers to the Appeals Chamber’s questions orally, Parties and participants would provide their answers in writing”.⁵

6. The Defence of Mr Blé Goudé agrees in part with the Prosecution’s proposal to respond in writing to certain questions of the Appeals Chamber relating to the appeal, in light of the COVID-19 pandemic. In *the Prosecutor v. Bemba*, the Appeals Chamber both ordered written submissions on a set of certain issues raised by Mr Bemba’s appeal, and scheduled an oral hearing for the parties to make oral submissions on a broader set of questions.⁶ The Defence respectfully requests that the same procedure be adopted in the instant case.

7. As far as the proposed deadline for the written submissions is concerned, i.e. that the Appeals Chamber would issue its questions at least 21 working days in advance of the day of their submission, the Defence does not object with this proposal, given that it will provide the parties with adequate time to prepare their written responses.

b. The Defence opposes the cancellation of the appeals hearing

8. With regards to the remainder of the appellate proceedings, and more specifically, the 11-13 May 2020 hearing, the Prosecution requests the Appeals Chamber to postpone or cancel the scheduled hearing. According to the Prosecution, although it is generally accepted that oral hearings are held in the appeals stage, there is no legal requirement to do so.

⁵ ICC-02/11-01/15-1330, para. 36, first bullet point.

⁶ ICC-01/05-01/08-3564 and ICC-01/05-01/08-3579.

9. To support this argument, the Prosecution cites three cases that are relevant to the matter. In *The Prosecutor v. Ngudjolo*, the Appeals Chamber held that a decision to hold an oral hearing in appeal proceedings against final judgments is discretionary and is made on a case-by-case basis,⁷ an opinion echoed later in *The Prosecutor v. Bemba et. al.*⁸ In *The Prosecutor v. Ruto and Sang*, the Appeals Chamber decided that an oral hearing was not the only procedural option that could facilitate the proceedings in terms of clarifying and receiving answers to potential questions and concerns regarding the appeal.⁹ It should be noted, however, that this decision did not relate to appeals proceedings after a final decision, but to a request for an oral hearing pursuant to Rule 156(3).
10. Nevertheless, according to the Appeals Chamber “[s]uch decisions should be based primarily on the potential utility of an oral hearing, namely whether it would assist the Appeals Chamber in clarifying and resolving the issues raised in the appeal”.¹⁰ As such, the complexity of the case and the issues at hand are important factors when deciding to hold an oral hearing for the appeal proceedings.
11. In the present case, a number of complex and novel issues raised in the appeal regarding the nature of the NCTA proceedings and their functioning within the ICC system, namely the applicable standard of proof, as well as the application of Article 74 of the ICC Statute, constitute a necessity of scheduling an oral hearing. All these issues surfaced for the very first time in the Court’s history during the present case and will form part of the Court’s jurisprudence. As a result, their clarification during an oral hearing is deemed necessary to facilitate the decision-making process.

⁷ ICC-01/04-02/12-199 OA, para. 13.

⁸ ICC-01/05-01/13-2275-Red, para. 47.

⁹ ICC-01/09-01/11-271, para. 12.

¹⁰ ICC-01/04-02/12-199 OA, para. 13.

12. As far as the expeditiousness of the proceedings is concerned, this is indeed a crucial consideration. However, Mr Blé Goudé is not in custody, has never requested for the lifting of his conditions, but rather has asked the Appeals Chamber to order that certain measures are modified to ensure his security, pending the final outcome of the appeal. Therefore, the Defence submits that postponing the hearing will not result in undue prejudice to Mr Blé Goudé.
13. Additionally, the expeditiousness of the proceedings cannot be guaranteed by conducting the remainder of the proceedings in writing, since that will also require a considerable amount of time and resources. In this scenario, the constant exchanges and submissions of filings, the deadlines and the potential extensions granted due to the limited resources that are currently available because of the current situation, would create considerable delays and maximise the workload of both the Chamber and the parties involved.
14. On the other hand, the expeditiousness of the proceedings should not come to the expense of their fairness. The public nature of court proceedings is a necessary component of the right to a fair trial, especially in the present case where an acquittal is the subject of the appeal. Besides that, a high-profile case such as the one at hand has a direct impact on the Ivorian society and the reconciliation efforts made in the State party. Excluding the public and the press from the proceedings, either by conducting the proceedings in writing or by holding an oral hearing via teleconference, would undermine such efforts and could affect the legitimacy of the judgment, as this is perceived by the public.
15. In light of the above, the Defence opposes a potential cancellation of the oral hearing, as well as any hearing being held via teleconference. The Defence respectfully requests the Appeals Chamber to schedule an oral hearing on a later date, when the ICC staff and external parties will resume their work at the permanent premises.

III. RELIEF SOUGHT

16. The Defence thereby respectfully requests the Appeals Chamber to:

- a. **REJECT** the Prosecution's Application for the Appeals Chamber to order written submissions *in lieu* of a scheduled oral hearing
- b. **SCHEDULE** an oral hearing at a date when the ICC staff and external parties resume their work at the Permanent Premises.

Respectfully submitted,



A rectangular box containing a handwritten signature in dark ink. The signature is written in a cursive style and appears to read 'M. Knoop'. Above the signature, there is a horizontal line that has been crossed out with a single vertical stroke in the center.

Mr Knoop, Lead Counsel and Mr N'Dry, Co-Counsel

Dated this 21 April 2020

At The Hague, the Netherlands