

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No: ICC-02/11-01/15

Date: 1 September
2017

TRIAL CHAMBER I

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

SITUATION IN COTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLE GOUDE***

Public

**Defence Observations on “Requête aux fins que le témoin P-0583 ne soit pas
considéré comme témoin expert”**

Source: Defence of Mr Charles Blé Goudé

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

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**Victims Participation and Reparations
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Other

1. On 31 August 2017, the Defence of Laurent Gbagbo (“Gbagbo Defence”) requested Trial Chamber I (“the Chamber”) to decide that Witness P-0583 should not be heard as an expert witness (“the Request”).¹ The Defence of Mr. Blé Goudé (“the Defence”) associates itself with the Request and the arguments of the Gbagbo Defence contained therein.
2. In addition to the case law already cited by the Gbagbo Defence in the *Milutinović* case,² the Defence also refers in the same case to the Trial Chamber’s “Decision on Prosecution Request for certification of interlocutory appeal of decision on admission of witness Philip Coo’s expert report” dated 30 August 2006 (“the Decision”), in which the Trial Chamber denied the Prosecution’s request for certification of an interlocutory appeal of its decision to rule out Philip Coo as an expert witness. In the Decision, it was reiterated that witness Philip Coo was too close to the Office of the Prosecutor to be considered as an expert witness.
3. Indeed, in paragraph 10 of the Decision, the Trial Chamber summarised the basic facts at issue as follows: *“[t]he Prosecution explained to the Trial Chamber that Mr. Coo has been employed by the Office of the Prosecutor (“OTP”) since 1999 when investigations into this case first began. He provided advice to the OTP on how to shape the case and other advice on how to conduct the interviews of some of the accused and other military personnel. He also carried out investigations to identify documents which support the case. Furthermore, his report does not merely provide facts established on the basis of the information gathered during the investigation, but also contains his opinions regarding that information and how it relates to the individual criminal responsibility of the accused. The Trial Chamber decided that the particular*

¹ « Requête aux fins que le témoin P-0583 ne soit pas considéré comme témoin expert », a courtesy copy of which was sent by email to the Trial Chamber, the parties and participants on 31 August 2017.

² Request, para. 24, citing the following oral decision: ICTY, *The Prosecutor v. Milan Milutinović et al.*, IT-05-87-T, Transcript of 13 July 2006, pp. 839-840.

circumstances of his involvement in the investigation and preparation of the Prosecution case were such that it could not regard his opinion as bearing the appearance of impartiality on which findings crucial to the determination of guilt of criminal charges might confidently be made.”³

4. Based on the role that Witness P-0583 played in this specific case in regards to the investigation conducted by the Office of the Prosecutor and its interviews of witnesses, a similar ruling as set forth by the Trial Chamber in the *Milutinović* case is warranted. This conclusion is reinforced by the observation that most of the reports delivered by P-0583 are based on a subjective interpretation of forensic materials presented by the Office of the Prosecutor itself.
5. In light of this additional jurisprudence, the Defence fully supports the Request.



Mr. Knoops, Lead Counsel and Mr. N'Dry, Co-Counsel

Dated this
1 September 2017
At The Hague, the Netherlands

³ ICTY, *Prosecutor v. Milan Milutinović et al.*, IT-05-87-T, “Decision on Prosecution Request for certification of interlocutory appeal of decision on admission of witness Philip Coo’s expert report” dated 30 August 2006, para. 10.