

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Original: English

Date: **30 January
2018**

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***

Confidential

Defence Response to the "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"

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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Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

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Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

I. Introduction

1. On 19 January 2018, the last Prosecution witness concluded her testimony.¹ In light of this, the Presiding Judge of Trial Chamber I (“the Chamber”) adjourned the hearing by informing the parties and participants that the Chamber would render a decision, which would determine “the way in which this trial will continue”²
2. Not more than a week later, in complete disregard to the Presiding Judge’s instruction, the Prosecution filed its “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.”³
3. The Defence for Mr. Blé Goudé (“the Defence”) opposes the request in its entirety, and submits that it should be rejected *in limine* since the Chamber is currently deliberating all the issues raised therein, and the Prosecution waived its opportunity to raise this request by not making any submissions when the matter was being litigated.

II. Confidentiality

4. Pursuant to regulation 23*bis* (2) of the Regulations of the Court, the Defence files its response with “confidential” as it responds to a request, which has been classified as confidential. However, since the content of the request does not contain confidential information, the Defence would not be opposed to the submissions being reclassified as public.

III. Applicable Law

¹ ICC-02/11-01/15-T-220-CONF-ENG ET 19-01-2018 91/91 : 2.

² ICC-02/11-01/15-T-220-CONF-ENG ET 19-01-2018 91/91 : 6-8.

³ ICC-02/11-01/15-1113-Conf.

5. Regulation 134(3) allow for the Prosecution and the Defence to request the Trial Chamber to rule on issues that arise during the course of the trial.
6. Regulation 24(1) allows the Prosecution and the defence to file a response to any document filed by a participant in the case..."

IV. Submissions

7. In its request, the Prosecution asks the Chamber to order the Blé Goudé and Gbagbo Defence to: (1) provide provisional lists of witnesses and evidence, as well as time estimates for their witness examinations, (2) provide the Prosecution on a rolling basis any Rule 78 materials in their possession or control, and (3) to file by a date to be determined by the Chamber any requests for relief that are likely to have an impact on the commencement of their respective cases. In the alternative, the Prosecution requests the scheduling of a Status Conference in order to address these and issues related to the preparation for the presentation of Defence evidence.
8. Despite the Chamber informing the parties that the decision on the presentation of evidence by the Defence would be issued in due course, the Prosecution heedlessly disregarded the Chamber's instruction by making these requests, which are directly related to a matter that the Chamber announced was *sub judice*.
9. The Prosecution could have raised these requests on at least three previous occasions. First, pursuant to Regulation 24(1) the Prosecution could have responded to the 10 February 2017 Defence submissions, in which the Defence provided a preliminary estimate of the amount of time needed for their respective cases and its potential number of witnesses. Second, the Prosecution was again presented with an opportunity to respond when the Defence made submissions on 2 October 2017. In those submissions, the

Defence similarly provided the Chamber with information regarding the presentation of its evidence. In both instances, the Prosecution **chose** not to avail itself of the opportunity to respond to the Defence submissions.

10. Third, and in the event the Prosecution esteemed that its requests were outside the scope of a potential response to the Defence's submissions made on 10 February and 2 October 2017 respectively, the Prosecution could have availed itself of its right to make submissions pursuant to Rule 134(3) of the Rules of Procedure and Evidence. It could have presented these requests when they became ripe for adjudication. The Prosecution was well aware that the supplemental directions on the conduct of proceedings were silent as to the presentation of Defence evidence, and was well apprised of the Defence's submissions regarding a possible filing of a no case to answer motion as of October 2017. The Prosecution did not make a single submission in order to resolve the issue of whether the Chamber would allow a no case to answer procedure, and thus postpone the disclosure of any Rule 78 evidence, and the filing of provisional lists of witnesses and evidence.
11. The Prosecution cannot now avail itself of this opportunity to make these submissions on the eve of the Chamber's decision. At this juncture, the Prosecution is interfering with the Chamber's discretion to determine the course of the proceedings in regard to the possibility of a no case to answer motion, and the potential presentation of evidence by the Defence.
12. Therefore, the Defence submits that the Prosecution's reliance on the *The Prosecutor v. Ongwen* is completely misplaced. In that case, the Single Judge of Trial Chamber IX determined that the time to file preliminary directions on Defence evidence was when the Prosecution had completed over half of its *vica voce* witnesses. The Chamber then put the Defence on notice as of October 2017, that it was expecting provisional lists of witnesses and evidence as of

December 2017. Here, the Chamber has clearly decided to not adopt such a procedure, and in the course of the Prosecution's presentation of evidence has not once intimated the deadline for any provisional list of Defence witnesses or evidence. Instead, the Chamber has sought on two occasions information from the Defence as to their presentation of evidence, and has determined that a decision would be rendered after the testimony of the last Prosecution witness. The decision is forthcoming and the parties should abstain from making submissions on the matter unless expressly invited by the Chamber to do so.

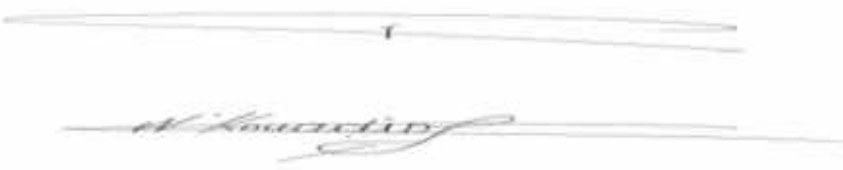
13. While the Defence by the present submissions does not address the substance of the Prosecution's arguments, it merely wishes to observe the unrealistic time frame for the Defence preparations that the Prosecution proposes. It took the Prosecution several years to build its alleged case against Charles Blé Goudé and Laurent Gbagbo, and now it asks that the Defence be afforded a mere month to provide it with its first list of witnesses and evidence.

RELIEF SOUGHT

In light of the foregoing, the Defence respectfully requests the Chamber to:

- **REJECT** the Prosecution's Requests *in limine*.

Respectfully submitted,



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

Dated this

30 January 2018,

At The Hague, the Netherlands