

**Cour
Pénale
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**International
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Court**

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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 Document

Views and concerns of victims in relation to the "Order on the further conduct of the proceedings" (ICC-02/11-01/15-1124)

Source: Office of Public Counsel for Victims

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

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I. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)¹ conveys to the Chamber the concerns of the victims in relation with the Order inviting the Prosecution to submit a trial brief illustrating the case and detailing the evidence in support of the charges against Mr Gbagbo and Mr Blé Goudé (the “Trial Brief”).

2. In the framework of her consultations with victims after the closing of the presentation of evidence by the Prosecution, the Legal Representative discussed the developments of the proceedings, including the Order of the Chamber. In this regard, victims expressed their serious concern that the submission of the Trial Brief and the ensuing proceedings may delay the conclusion of the trial.

3. Furthermore, the victims are also concerned by the fact that the Order does not expressly envisage the provision of their views on the Trial Brief, although the submission of said document will undoubtedly affect their personal interests.

4. In these circumstances, the Legal Representative reserves her right to address the Chamber in order to preserve and defend the interests of the victims she represents once the Trial Brief is submitted by the Prosecution.

II. Background

5. On 26 January 2018, the Prosecution requested the Chamber to (i) order the Defence to provide a preliminary list of evidence and the disclosure of material in its control, (ii) set a time limit for the submission by the Defence of requests for relief likely to have an impact on the scheduling, and (iii) call a status conference to discuss

¹ See the “Decision on victim participation” (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015; and the “Decision on victims’ participation status” (Trial Chamber I), No. ICC-02/11-01/15-379, 7 January 2016, p. 23.

preliminary directions for the presentation of Defence evidence (the “Prosecutor’s Request”).²

6. On 30 January 2018, the Defence of Mr Blé Goudé filed its response to the Prosecutor’s Request.³ The Defence of Mr Gbagbo filed its response to the Prosecutor’s Request on 2 February 2018.⁴

7. On 9 February 2018, the Chamber issued the “Order on the further conduct of the proceedings” (the “Order”),⁵ inviting, *inter alia*, the Prosecution to file a trial brief illustrating its case and detailing the evidence in support of the charges (the “Trial Brief”), and ordering the Defence to respond to said brief indicating “(i) which aspects of the Prosecutor’s case they do not contest, (ii) which aspects they intend to challenge by way of presenting additional evidence; and (iii) whether they intend to submit evidence in relation to facts and circumstances that have hitherto not been the discussed during the trial”.⁶

8. On 12 February 2018, the Prosecution communicated by e-mail to the Chamber, the Defence and the Legal Representative that it will respond favourably to the Chamber’s invitation to submit a Trial Brief no later than 30 days after notification of the Order.⁷

² See the “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”, No. ICC-02/11-01/15-1113-Red, 13 February 2018 (the “Prosecutor’s Request”).

³ See the “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”, No. ICC-02/11-01/15-1116, 30 January 2018.

⁴ See the “Réponse de la Défense à la « 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 » (ICC-02/11-01/15-1113-Conf)”, No. ICC-02/11-01/15-1121-Conf, 2 February 2018.

⁵ See the “Order on the further conduct of the proceedings” (Trial Chamber I), No. ICC-02/11-01/15-1124, 9 February 2018 (the “Order”).

⁶ *Idem*, paras. 10 and 14.

⁷ See the e-mail received from the Prosecution on 12 February 2018 at 15h36.

9. Pursuant to article 68(3) of the Rome Statute and rule 91(2) of the Rules of Procedure and Evidence, the Legal Representative respectfully submits the views and concerns of the victims in relation to the Order as conveyed to her during the recent consultation with her clients following the closing of the presentation of evidence by the Prosecution. The Legal Representative has a professional obligation to relay to the Chamber said views and concerns.

III. Submissions

10. Victims share serious concerns in relation to the fact that the further conduct of the proceedings, as instructed by the Chamber, may have an impact on the expeditious conduct of the trial.

11. Indeed, the Order expressly foresees the Prosecution's filing of the Trial Brief within 30 days from its notification and instructs the Defence to make "submissions" regarding said brief no later than 30 days following the notification thereof.⁸

12. The victims are of the view that the procedure envisaged in the Order already delays to some extent the proceedings in so far as the Chamber will not pronounce itself on the start of the presentation of evidence by the Defence before the lapse of the two-month period. Moreover, said procedure may take longer than the aforementioned 60 days, given the expected content of the Trial Brief and the possible reaction thereto by the Defence.

13. In this regard, the Order does not set a specific page-limit for the Prosecution's and the Defence's submissions, but only a reasonable expectation of the length of said submissions.⁹ Taking into account that more than 200 hearings have been held so far – involving over 80 witnesses – the Prosecution is likely to file a lengthy and

⁸ See the Order, *supra* note 5, p. 8.

⁹ *Idem*, para. 15.

substantive Trial Brief. In turn, the Defence may request an extension of time to file its submissions with regard to said brief and/or eventually challenge its content – a course of action that the Defence has already regularly taken in these proceedings so far.

14. The scenario described *supra* would replicate the extensive litigation that arose from the Chamber’s invitation to the Prosecution to file a pre-trial brief in 2015.¹⁰ As a result, it would seriously delay the resumption of the hearings and would negatively impact the victims’ personal interests to expeditiously hear the presentation of evidence by the Defence and to see the conclusion of the trial.¹¹

15. In this regard, some victims who continue to suffer the consequences of the harms caused by the crimes committed during the post-electoral crisis posit that they may not live long enough to see the end of the trial and are frustrated in so far as their quest for the truth is taking much longer than anticipated.

16. Furthermore, victims also indicated that the very Trial Brief envisaged in the Order will have an impact on their personal interests and that they wish to put forward their views in relation to said document.

17. As envisaged in the Order, in the Trial Brief the Prosecutor will “[i]ndicate to the Chamber in which way she thinks the evidence supports each of the elements of the different crimes and forms of responsibility charged”.¹² The Order also makes reference to the possibility for the Prosecution to withdraw any or all of the charges on which evidence has been heard so far.¹³

¹⁰ See, for instance, the “Decision on Defence requests relating to the Prosecution’s Pre-Trial Brief” (Trial Chamber I), No. ICC-02/11-01/15-224, 16 September 2015.

¹¹ See, for instance, the transcript of the hearing held on 17 January 2018, No. ICC-02/11-01/15-T-219-ENG ET, p. 51, lines 17-20.

¹² See the Order, *supra* note 5, para. 10.

¹³ *Idem*, para. 13.

18. The Prosecutor's assessment of the evidence presented and the eventual withdrawal of any charge are crucial not only to the Defence, but also to the victims authorised to participate in the trial.¹⁴ The Legal Representative has repeatedly indicated that the personal interests of the victims she represents include the determination of the scope of the victimisation they suffered from and the reparations of the harm resulting therefrom.¹⁵

19. The Trial Brief will provide important information for the satisfaction of said victims' interests, not only because said document will contribute to their right to truth,¹⁶ but also because the Court may grant reparations only with the prior identification of those responsible for the crimes suffered by the victims.¹⁷

20. In this regard, the Order expressly notes that the instructions provided by the Chamber on the structure and content of the Trial Brief are "[f]or the trial brief to best serve its purpose as an auxiliary tool to the benefit of both the Chamber and the parties and participants for the trial".¹⁸

¹⁴ See the "Concurring Separate Opinion of Judge Eboe-Osuji to the Decision on the withdrawal of charges against Mr Muthaura" (Trial Chamber V), No. ICC-01/09-02/11-698, 19 March 2013, paras. 11, 29 and 32.

¹⁵ See, for instance, the transcripts of the hearings held on 9 May 2016, No. ICC-02/11-01/15-T-35-Red-ENG WT, p. 2, lines 4-12; 22 November 2016, No. ICC-02/11-01/15-T-103-Red-ENG WT, p. 82, line 17 to p. 83, line 1; and 2 December 2016, No. ICC-02/11-01/15-T-110-CONF-ENG ET, p. 2, lines 1-12.

¹⁶ See the "Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case" (Pre-Trial Chamber I), No. ICC-01/04-01/07-474, 13 May 2008, paras. 32 and 34-36; the "Fourth Decision on Victims' Participation" (Pre-Trial Chamber III), No. ICC-01/05-01/08-320, 15 December 2008, para. 90; and the "Decision on the Modalities of Victim Participation at Trial" (Trial Chamber II), No. ICC-01/04-01/07-1788-tENG, 3 March 2010, para. 59.

¹⁷ See the "Decision on the admissibility of the appeals against Trial Chamber I's Decision establishing the principles and procedures to be applied to reparations and directions on the further conduct of proceedings" (Appeals Chamber), No. ICC-01/04-01/06-2953 OA21, 14 December 2012, para. 66; and the "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2" (Appeals Chamber), No. ICC-01/04-01/06-3129 A1 A2 A3, 3 March 2015, paras. 1 and 32. See also the "Decision on the implementation of the request to freeze assets" (Trial Chamber V(B)), No. ICC-01/09-02/11-931, 8 July 2014, para. 20.

¹⁸ See the Order, *supra* note 5, para. 11 (emphasis added).

21. The purpose of the Trial Brief identified *supra* by the Chamber is consistent with the fact that the Legal Representative intervened during the presentation of evidence by the Prosecution to represent the victims' personal interests, especially to elicit evidence during the testimony of her clients.¹⁹ The Legal Representative requested leave to submit documentary evidence for the same purpose.²⁰

22. Against this background, victims are concerned by the fact that, although the Trial Brief will have an impact upon their personal interests, the operative part of the Order does not expressly provide for the filing of observations by their lawyer.²¹

23. The victims understand that their role in the proceedings is not to prove the guilt or innocence of the Accused and appreciate what seems to be an effort of the Chamber to streamline the presentation of evidence by the Defence in order to proceed as expeditiously as possible.

24. However, the victims consider that there is no reason for their lawyer not to be heard on a matter as important as the one envisaged in the Order. The Trial Brief clearly impacts on the victims' personal interests to see justice rendered with regard to the persons they consider responsible for the crimes they suffered from, and continue to suffer from. Moreover, the victims do not understand the reasons eventually justifying the course of events envisaged in the Order, in so far as their

¹⁹ See, for instance, the transcripts of the hearings held on 3 February 2016, No. ICC-02/11-01/15-T-13-Red3-ENG CT, p. 62, line 16 to p. 65, line 4; 16 May 2016, No. ICC-02/11-01/15-T-39-CONF-ENG CT, p. 33, line 6 to p. 38, line 12; 23 November 2016, No. ICC-02/11-01/15-T-104-CONF-ENG CT, p. 88, line 19 to p. 89, line 8; 5 December 2016, No. ICC-02/11-01/15-T-111-Red-ENG WT, p. 61, line 11 to p. 62, line 4; 26 April 2017, No. ICC-02/11-01/15-T-147-CONF-ENG ET, p. 54, line 10 to p. 62, line 3; 7 July 2017, No. ICC-02/11-01/15-T-174-Red-ENG WT, p. 18, line 8 to p. 22, line 17; 10 July 2017, No. ICC-02/11-01/15-T-175-Red-ENG WT, p. 12, line 22 to p. 17, line 25; 14 September 2017, No. ICC-02/11-01/15-T-192-Red-ENG WT, p. 12, line 6 to p. 18, line 20; 14 November 2017, No. ICC-02/11-01/15-T-208-CONF-ENG ET, p. 34, line 4 to p. 39, line 14; and 28 November 2017, No. ICC-02/11-01/15-T-212-CONF-ENG ET, p. 24, line 18 to p. 26, line 1.

²⁰ See the "Legal Representative's Application for the introduction of documentary evidence under paragraphs 43-44 of the Amended Directions on the conduct of the proceedings", No. ICC-02/11-01/15-1088, 15 December 2017, paras. 16-17. The decision of the Chamber is still pending. In this regard, see the Order, *supra* note 5, para. 12.

²¹ *Idem*, p. 8.

lawyer was allowed to intervene on any matter of fact or law raised so far during the trial.

25. As stated by different Chambers, victims do not bear the onus of proving the guilt of the Accused,²² but Legal Representatives have the duty to defend the personal interests of the victims authorised to participate in a case.²³

26. Since the Prosecutor's narrative of her case in light of the testimonies heard and the documentary evidence submitted at trial will affect the personal interests of the victims participating in this case, the Legal Representative reserves her right to address the Chamber in order to preserve and defend said interests once the Trial Brief is filed by the Prosecution.

Respectfully submitted.



Paolina Massidda
Principal Counsel

Dated this 16th day of February 2018

At The Hague, The Netherlands

²² See the "Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008" (Appeals Chamber), No. ICC-01/04-01/06-1432 OA9 OA10, 11 July 2008, para. 95; the "Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled 'Decision on the Modalities of Victim Participation at Trial'" (Appeals Chamber), No. ICC-01/04-01/07-2288 OA11, 16 July 2010, para. 112; and the "Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled 'Judgment pursuant to article 74 of the Statute'" (Appeals Chamber), No. ICC-01/04-02/12-271-Corr A1, 7 April 2015, paras. 25-26.

²³ See, for instance, the "Annex A to Decision adopting amended and supplemented directions on the conduct of the proceedings" (Trial Chamber I), No. ICC-02/11-01/15-498-AnxA, 4 May 2016, paras. 15, 17, 18 and 20. See also the "Second Decision on the Motion of Legal Representative of Victim Applicants to Participate in Initial Appearance Proceedings and Article 19 Admissibility Proceedings" (Pre-Trial Chamber II), No. ICC-01/09-01/11-40, 6 April 2011, para. 14 .