

**Cour
Pénale
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**International
Criminal
Court**

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

Date: **2 October
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

**Public Redacted Version of “Blé Goudé Defence submissions pursuant to the
Chamber’s order issued on 28 August 2017” (ICC-02/11-01/15-1040-Conf)**

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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I. Introduction

1. On 28 August 2017, the Presiding Judge of Trial Chamber I (“Chamber”) requested the “Defence teams to indicate approximately the number of witnesses they envisage to call and to indicate 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” (“the Order”).¹
2. The Defence for Charles Blé Goudé (“Defence”) hereby endeavours to accommodate the Chamber with the requested information in so far as this is possible at this stage. At this juncture, the Defence is not in a position to provide the Chamber with firm estimates, since the Prosecution has not presented its case in its entirety.
3. The Defence incorporates by reference the entirety of its submissions made on 2 February 2017, in which the Defence provided Trial Chamber I (“Chamber”) with information regarding its potential number of witnesses and the need for a suspension.

II. Confidentiality

4. Pursuant to regulation 23bis (2) of the Regulations, the Defence requests that the present response be received and classified as “confidential”, as it refers to information that is currently confidential. The Defence will file a public redacted version as soon as the confidential version is notified.

III. Submissions

¹ ICC-02/11-01/15-T-181-ENG, p. 2, lines 17-20.

A. In the event the Defence presents evidence, it will not call more than [REDACTED] witnesses

1. The number of Prosecution witnesses called in this trial continues to be unprecedented in the history of the ICC. Despite continuing to reduce its total number of witnesses,² the Prosecution to date intends to have nearly [REDACTED] witnesses testify against Mr. Blé Goudé and Mr. Laurent Gbagbo.³ At the time of these submissions, one of the Prosecution's chief witnesses, namely, P-0009 is testifying, and the crime-base witnesses scheduled to testify on [REDACTED] will not be heard before [REDACTED]. Thus, the Defence is not in a position to provide the Chamber with a firm estimate of its number of witnesses. However, in the event the Defence does present a Defence case, it is in a position to submit that it will not call more than [REDACTED] witnesses. It must be stressed that this number is subject to change, due to the procedural posture of the case.

B. The Defence notifies the Chamber of its intention to potentially file a motion for acquittal

2. As the Prosecution case draws to a close, the Defence finds it appropriate to inform the Chamber, parties and participants of its intention to potentially file a motion for acquittal after the close of the Prosecution case, depending on its outcome. The Defence kindly recalls that in May 2015, the parties made submissions in regard to adopting a no case to answer procedure.⁴ The Defence is cognisant of the recent judgment in *The Prosecution v. Ntaganda* whereby the Appeals Chamber determined that it is within the discretion of

² ICC-02/11-01/15-788; ICC-02/11-01/15-823-Conf; ICC-02/11-01/15-949-Conf; ICC-02/11-01/15-981-Conf ; ICC-02/11-01/15-1030-Conf.

³ ICC-02/11-01/15-1013-Conf-Anx.

⁴ ICC-02/11-01/15-77, paras. 3-5; ICC-02/11-01/15-74, paras. 44-51; ICC-02/11-01/15-59, paras. 6-2.

the Trial Chamber to determine whether to conduct a no case to answer procedure.⁵

3. The Defence notes that in the present proceedings the Chamber refrained from adjudicating the matter in both its first decision on the conduct of proceedings issued on 3 September 2015 and in its “Decision amending adopted and supplemented directions on the conduct of the proceedings” rendered on 4 May 2016.⁶ The Defence does not interpret the Chamber not ruling on the issue as a rejection of the proposed procedure.
4. On at least two occasions, the Chamber recalled that the directions on the conduct of the proceedings were subject to change, and that they were not intended to be exhaustive. For example, on 10 November 2015, the Chamber issued an oral ruling on certain observations and objections that the Defence had raised regarding the conduct of proceedings.⁷ In rendering it, the Chamber noted that while the Directions on the conduct of proceedings regulated certain aspects of the proceedings, “the Chamber intentionally left certain matters unaddressed, which would be the subject to determination in the course of the trial.”⁸ Similarly, when issuing the supplemented and amended directions, the Chamber recalled that “[p]ursuant to Rule 134(3) of the Rules, [it] may rule on any issues that arise during the course of the trial, including any modification or **additions** to the current directions” (*emphasis added*).⁹

⁵ ICC-01/04-02/06-2026.

⁶ ICC-02/11-01/15-498.

⁷ ICC-02/11-01/15-263 (While the Defence did not mention its wish to file a motion for acquittal in the submissions, it did note “the observations and objections contained herein do not preclude the Defence from exercising its right to address other issues arising from the conduct of the proceedings in the future under Rule 134 of the Rules of Procedure and Evidence”).

⁸ ICC-02/11-01/15-T-5-ENG, p. 4, lines 23-25, p. 5, lines 1.

⁹ ICC-02/11-01/15-498, para 2.

5. Pursuant to Rule 134(3), the Defence respectfully requests the Chamber to consider adopting a procedure, which would allow the Defence to potentially submit motions for acquittal at the close of the Prosecution's case, or in the event the LRV is authorized to present evidence, at the end of its presentation. While the Chamber has already heard the parties' submissions on a no case to answer procedure, the Defence respectfully requests, the Chamber to consider having such a procedure in place after the close of the Prosecution for two reasons.

6. First, the Defence made its initial submissions prior to the start of trial, and thus its submissions were limited to the theoretical appropriateness of allowing the Defence to submit a motion for acquittal. Now, as the Prosecution is closing its case, the Defence has at its disposal the necessary elements to substantiate the appropriateness of a no case to answer procedure in the present proceedings. It could demonstrate, if such a procedure would be granted, that a no case to answer procedure could considerably contribute to the expeditiousness of the proceedings. By eliminating certain charges, the Defence will be able to streamline its evidence, and limit the scope of its presentation to those charges for which the Prosecution has shown it has a *prima facie* case. The time saved through such a procedure, will compensate for any limited time allocated to the adjudication of such a motion. Moreover, if the Prosecution has failed to produce credible evidence in regard to Mr Ble Goue committing an offense under the Statute, a no case to answer procedure could effectively safeguard Mr. Blé Goudé's right to raise evidence and present evidence under Article 67(1)(e) and his right to remain silent under Article 67(1) (g) of the Statute.¹⁰

7. The second reason the Chamber should consider new submissions on a possible no case to answer procedure is connected with its decision to refrain

¹⁰ ICC-01/04-02/06-2026, para. 46.

from adjudicating whether a no case to procedure would be conducted in the present proceedings. It is the understanding of the Defence that the Chamber considered that such an issue was not yet ripe for adjudication when it adopted its directions on the conduct of the proceedings, since the trial had yet to commence. It, like the parties, did not have all the elements at its disposal to make a determination. Now that the Prosecution's case is due to close in two months, the Chamber could at the end of the Prosecution case decide on the appropriateness of a no case to answer procedure, and accept submissions from the parties which, unlike the first submissions will not be based on theory, but on the evidence that has been led by the Prosecution.

C. The Defence will request a suspension at the close of the Prosecution case


8. The Defence wishes to inform the Chamber that it will request a suspension of the proceedings at the close of the Prosecution's case, or if applicable the close of the LRV's presentation of evidence. The Defence will need time and facilities to examine and evaluate the results of the OTP case. Then, based on said evaluation, it will assess the filing of a potential "no case to answer" request. Lastly, the Defence needs a reasonable time to effectuate its investigation in order to prepare the defence case.

9. The Defence also envisages requesting another suspension in the event the Defence for Laurent Gbagbo presents its own case. In order to avoid duplication of evidence, and to streamline its presentation of evidence, the Defence envisages requesting a suspension at the close of the presentation of evidence by the Defence for Mr Laurent Gbagbo for a period not to exceed two to three months, during which the Defence of Mr Blé Goudé can evaluate and reassess its own list of witnesses. However, the Defence wishes to stress that this estimate is subject to change since it does not know: (1) whether a no

case to answer procedure will be adopted, (2) whether the Defence teams intend to present evidence, (3) the number of witnesses that the Defence for Laurent Gbagbo intends to have testify and the number or the content of its evidence.

10. In regard to a possible suspension at the close of the Prosecution or LRV's presentation of evidence, the Defence maintains that it is not in a position to provide the Chamber with a firm estimate since the most important insiders to the case have yet to complete their testimony. Any estimate regarding the duration of the suspension is dependent on whether a no case to answer procedure is adopted or not. If such a procedure were to be adopted, the Defence submits that it could shorten the length of time it would need to prepare its case.

Respectfully submitted,



A rectangular box containing a handwritten signature in dark ink. The signature is cursive and appears to read 'Mr. Knoop'. Below the signature, there is a horizontal line.

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

Dated this 02 October 2017

At The Hague, the Netherlands