

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/11-01/15
Date: 2 February 2018

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

Decision on the Prosecutor's "consolidated application for leave to reply to Gbagbo and Blé Goudé responses ICC-02/11-01/15-1098-Conf and ICC-02/11-01/15-1099-Conf"

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Geert-Jan Alexander Knoops
Claver N'dry

Legal Representatives of Victims

Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Regulation 24(5) of the Regulations of the Court, issues this decision on the “Prosecution’s consolidated application for leave to reply to Gbagbo and Blé Goudé responses ICC-02/11-01/15-1098-Conf and ICC-02/11-01/15-1099-Conf” filed on 19 January 2018 (“Prosecutor’s Application”).¹

Procedural history

1. On 31 July 2017, the Prosecutor filed her application for the introduction of video evidence (“31 July 2017 Application”).²
2. On 11 September 2017, the Chamber granted the Defence and the LRV’s requests³ for an extension of the time limit to respond to the 31 July 2017 Application, until 15 January 2018.⁴
3. On 15 December 2017, the Prosecutor filed her supplemental submission of transcriptions of video evidence.⁵
4. On 15 January 2018, the Defence for Mr Gbagbo⁶ and the Defence for Mr Blé Goudé⁷ filed their responses (respectively, “Mr Gbagbo’s Response” and “Mr Blé Goudé’s Response”; collectively, “Defence Responses”).
5. On 19 January 2018, the Prosecutor filed her Application. On 23 January 2018, the Defence for Mr Blé Goudé filed its response to the Prosecutor’s Application,

¹ ICC-02/11-01/15-1101-Conf.

² ICC-02/11-01/15-998 (“Prosecution’s application for the introduction of video evidence under paragraphs 43-44 of the directions on the conduct of the proceedings and notice that it will not call Witness P-0541 to testify”).

³ ICC-02/11-01/15-1000; ICC-02/11-01/15-1001; LRV email to the Chamber dated 7 August 2017 at 14:18 hours.

⁴ ICC-02/11-01/15-T-189-ENG ET, page 1, line 16 to page 3, line 3.

⁵ ICC-02/11-01/15-1089 and annexes.

⁶ ICC-02/11-01/15-1098-Red and confidential annex.

⁷ ICC-02/11-01/15-1099-Conf and confidential annexes.

taking a position on some of the issues on which the Prosecutor seeks leave to reply and requesting the Chamber to reject it.⁸

Determinations by the Chamber

6. The Prosecutor submits that the Defence Responses to her 31 July 2017 Application (i) raise a number of issues which could not have been reasonably anticipated by her and (ii) refer to “certain factual matters” which need to be clarified or corrected; accordingly, she seeks authorisation to reply with a view to assisting the Chamber in its deliberations. The issues and matters, as listed in paragraph 6 of the Application, are as follows:
- a) The approach to the assessment of evidence taken in the Defence Responses (First Issue);
 - b) The Defence’s “challenge to the authenticity of the RTI videos” (Second Issue);
 - c) The “challenge to the value of repeated RTI excerpts” by the Defence for Mr. Blé Goudé (Third Issue);
 - d) The clarification of the meaning of the usage by the Prosecutor of the word “propaganda” (Fourth Issue);
 - e) The correction of a number of statements contained in Mr Blé Goudé’s Response as to either the status (sub-issues i, ii and vii), the meaning (sub-issue iii, vi and viii) or the features (sub-issues iv and v) of a number of items submitted through the 31 July 2017 Application (Fifth Issue); and
 - f) The clarification of three “issues of substance” in respect of three video items submitted through the 31 July 2017 Application (Sixth Issue).

⁸ ICC-02/11-01/15-1108-Conf.

7. Regulation 24 (5) of the Regulations of the Court stipulates that “a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated”. The Chamber takes the view that none of the issues identified by the Prosecutor warrant an authorisation to reply to the Defences’ Responses.
8. As regards the First Issue, it cannot be said that the Prosecutor could not have reasonably anticipated that the Defences, when responding to her 31 July 2017 Application, would address the issue of the approach to the evidence. Furthermore, the principles and criteria presiding over the assessment of the evidence are to be determined by the Chamber at the appropriate stage, in respect of all the evidentiary material which will have been submitted; accordingly, the issue transcends the subject matter of the 31 July 2017 Application, or of the responses to it, and a reply to the Defence Responses is not the appropriate venue to debate it.
9. Similar considerations can be made in respect of the Second and Third Issue. It cannot be said that the Prosecutor could not have reasonably anticipated that the Defence would address issues of authenticity, admissibility or relevance of the various video items in the context of their Responses. The Prosecutor had the opportunity to discuss these issues in her 31 July 2017 Application and will also be able to address the Defence concerns as emerging from their Responses in due course, should she still consider it necessary or appropriate.
10. As to the Fourth Issue, the Chamber notes that the use of the word “propaganda”, and the meaning the Prosecutor intended to give to it, is a matter for interpretation. The Prosecutor had an opportunity to explain her use of the word in her 31 July 2017 Application; allowing her now a second opportunity to further elaborate does not seem either justified or necessary at this stage.

11. As to the Fifth Issue, the Chamber notes that all the sub-issues contained in it refer to specific parts of Mr Blé Goudé's Response: accordingly, they arise from it and the Prosecutor could not have anticipated them prior to such response. By the same token, the Chamber has also noted the submissions contained in Mr Blé Goudé's Response to the Application, including the suggestions made as to the way in which each of the points raised by the Prosecutor in this issue should be addressed and the information to the effect that a corrigendum would be filed in respect of the statement referred to in sub-issue v. This corrigendum was filed on 24 January 2018.⁹

12. The Chamber deems that, at this stage, it is in possession of sufficient information in respect of sub-issues i to vii of the Fifth Issue and that a reply is therefore not warranted. As regards sub-issue viii, the Chamber considers that it is in a position to interpret and assess the testimony of Witness P-0009, including with a view to determining the accuracy of the statements made by the Defence for Mr Blé Goudé in this respect.

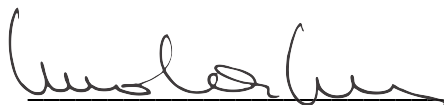
13. Finally, as regards the three sub-issues in which the Sixth Issue is divided, the Chamber notes that each of them already contains not only the Prosecutor's reply, but also an amendment to the 31 July 2017 Application. As highlighted by the Defence for Mr Blé Goudé, however, an application for leave to reply to a response is not the appropriate procedural avenue for such amendments.

FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY

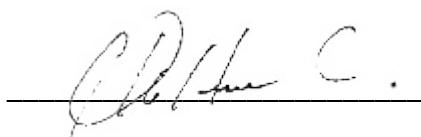
REJECTS the Prosecutor's Application;

⁹ ICC-02/11-01/15-1099-Conf-Anx4-Corr and annex.

ORDERS the Prosecutor and the Defence for Mr Blé Goudé to file, as soon as practicable, public redacted versions of the filings relevant to this decision currently classified as confidential.



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccia



Judge Geoffrey Henderson

Dated 2 February 2018

At The Hague, The Netherlands