

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 4 June 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

Second Order on the further conduct of the proceedings

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

Legal Representatives of Victims

Ms 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 Peter Lewis

Counsel Support Section

Mr Pieter Vanaverbeke

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to articles 64(2), 64(3)(a), 64(6)(f), 66 and 67 of the Rome Statute (“Statute”), rule 132(2), 134(3), 141 and 142 of the Rules of Procedure and Evidence (“Rules”), and regulation 54 of the Regulations of the Court (“Regulations”) issues the following order:

I. Procedural history and submissions

1. On 19 January 2018, the last witness called by the Prosecutor finished testifying.
2. On 9 February 2018, the Chamber issued its “Order on the further conduct of the proceedings” (“First Order on the Conduct of the Proceedings”). Following a number of requests for extension by the parties, the Prosecutor was granted until 19 March 2018 to file a “Trial Brief” and the Defence teams until 23 April 2018 to respond.¹
3. On 19 March 2018, the Prosecutor filed her “Mid-Trial Brief” (“Trial Brief”),² providing the narrative of her case with reference to the evidence submitted at this stage of the trial. However, the Prosecutor argued that it was “not possible to recite [...] all the relevant evidence” and only addressed “those matters it considers of importance, and endeavoured to support them with sources deemed to be of pertinence.”³ The Prosecutor also expressly reserved the right to make further submissions in case the Defence were to raise “specific challenges to the sufficiency of the evidence.”⁴

¹ ICC-02/11-01/15-1124.

² “Prosecution’s Mid-Trial Brief submitted pursuant to the Chamber’s Order on the further conduct of the proceedings (ICC-02/11-01/15-1124)”, 19 March 2018, ICC-02/11-01/15-1136.

³ Trial Brief, para. 7.

⁴ Trial Brief, para. 11.

4. On 23 April 2018, the Defence for Mr Blé Goudé and the Defence for Mr Gbagbo filed their observations on the continuation of the trial proceedings.⁵ Both accused expressed the view that the Prosecutor has not presented enough evidence to warrant a conviction and indicated that they intended to bring motions challenging the adequacy of the Prosecutor's evidence and asking for a full acquittal on all the charges.
5. On 1 June 2018, the "Decision concerning the Prosecutor's submission of documentary evidence on 28 April, 31 July, 15 and 22 December 2017, and 23 March and 21 May 2018" was filed.⁶ This ended the presentation of the evidence by the Prosecutor.

II. Analysis

6. The Chamber has considered the Trial Brief. It has noted that, notwithstanding some minor changes in respect of a limited number of allegations, the overall narrative has remained essentially the same as the one mirrored in the Pre-Trial Brief.
7. Both accused submit that there is insufficient evidence to convict either of them on the basis of the charges as confirmed by the Pre-Trial Chamber.

⁵ "Defence's written observations on the continuation of the trial proceedings pursuant to Chamber's Order on the further conduct of the proceedings (ICC-02/11-01/15-1124)", ICC-02/11-01/15-1158-Conf ('Blé Goudé Defence observations'); "Observations de la Défense présentées à la suite de l'ordonnance de la Chambre 'on the further conduct of the proceedings' du 9 février 2018 (ICC-02/11-01/15-1124)", ICC-02/11-01/15-1157-Conf.

⁶ ICC-02/11-01/15-1172 and annex A thereto. Judge Henderson appended a dissenting opinion: ICC-02/11-01/15-1172-Anx.

8. The Chamber is mindful, in this regard, of the Appeals Chamber's decision in the *Ntaganda* case in relation to "no case to answer" motions.⁷ According to the Appeals Chamber, the parties cannot compel the Trial Chamber to entertain "no case to answer" motions and a Trial Chamber may "decide to conduct or decline to conduct such a procedure in the exercise of its discretion."⁸ The Appeals Chamber stressed that each case may be different and that it is the Trial Chamber's duty to balance expediency and fairness in light of the specific circumstances of the case,⁹ provided that the trial proceedings remain fair and expeditious pursuant to article 64(2) and 64(3)(a) of the Statute.
9. The Chamber is of the view that, as part of its responsibility to ensure the efficiency and fairness of these proceedings, it must ensure that the trial does not take longer than is needed. This requires the Chamber to devise appropriate procedural steps that have the "potential to contribute to a shorter and more focused trial, thereby providing a means to achieve greater judicial economy and efficiency in a manner which promotes the proper administration of justice and the rights of an accused".¹⁰
10. Accordingly, the Chamber believes that, at this stage, the most appropriate and efficient way to proceed in light of its statutory duties is to authorise the Defence to make concise and focused submissions on the specific factual issues for which, in their view, the evidence presented is insufficient to

⁷ Appeals Chamber, *Prosecutor v. Bosco Ntaganda*, "Judgment on the appeal of Mr Bosco Ntaganda against the 'Decision on Defence request for leave to file a 'no case to answer' motion'", 5 September 2017, ICC-01/04-02/06-2026.

⁸ ICC-01/04-02/06-2026, para. 45.

⁹ ICC-01/04-02/06-2026, paras 54-55.

¹⁰ Trial Chamber V(A), *Prosecutor v. Ruto and Sang*, "Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions)", 3 June 2014, ICC-01/09-01/11-1134, para. 16.

sustain a conviction and in respect of which, accordingly, a full or partial judgment of acquittal would be warranted.¹¹ More specifically, the Defence are invited to explain why there is insufficient evidence which could reasonably support a conviction. In order not to defeat their purpose, and in light of the stage reached by these proceedings, such submissions must be filed and resolved expeditiously.

11. The Chamber leaves it to the discretion of the Defence teams to decide how their submissions will be organised, and in particular whether they wish to separately and specifically address each of the elements of the crimes and forms of responsibility charged. The Chamber observes that, pursuant to rule 142(2) of the Rules, it shall decide separately on each charge and separately on the charges against each accused. The Chamber is also of the view that it is not appropriate to set a specific page limit for the submissions to be filed in compliance with this order and that it is best left to the parties to decide upon the scope to be given to them. Nevertheless, the parties are urged to file concise and focused written submissions that are conducive to the efficient consideration by the Chamber.¹²

12. In light of the criminal nature of the trial, and with a view to fully implementing the paramount principles of the publicity and orality of the proceedings, the Chamber considers it also necessary, once it has received the written submissions, to hold a public hearing in order to hear any further submissions, and to allow the parties to respond to specific questions by the Judges. To the extent possible, the Chamber will endeavour to inform the

¹¹ The Chamber has observed that the Trial Brief contains several sweeping allegations on the basis of large collections of evidence and that a certain amount of repetitions, cross-references and circularity is still present. Given the volume of evidence submitted in this case, the Chamber stresses that any further submissions must be more precise and must avoid unnecessary repetitions.

¹² ICC-01/09-01/11-1134, para. 36.

parties of any such questions before the hearing, without prejudice to further questions being asked by the Judges during the course of the hearing.

13. These submissions will assist the Chamber in determining whether the evidence presented by the Prosecutor suffices to warrant the continuation of the trial proceedings and hear evidence from the accused, or whether the Chamber should immediately make its final assessment in relation to all or parts of the charges.

FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY

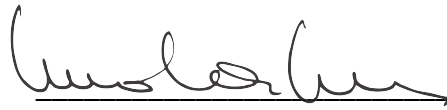
DECLARES that the presentation of the evidence of the Prosecutor is closed;

ORDERS the Defence for Mr Gbagbo and the Defence for Mr Blé Goudé to file, no later than 20 July 2018, submissions addressing the issues for which, in their view, the evidence presented by the Prosecutor is not sufficient to sustain a conviction;

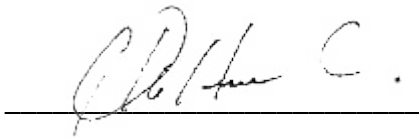
ORDERS the Prosecutor and the LRV to file, no later than 27 August 2018, their response, in accordance with the same modalities;

DECIDES to hold a hearing, starting on 10 September 2018 and extending as required, during which the parties and participants will be allowed to further illustrate or complete their submissions, as well as to respond to each other's submissions and to any questions the Chamber may have.

Done in both English and French, the English version being authoritative



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated 4 June 2018

At The Hague, The Netherlands