

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **13 June 2018**

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

Public

**Decision on “Urgent Prosecution’s motion seeking clarification on
the standard of a ‘no case to answer’ motion”**

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

Judge Cuno Tarfusser, acting as Single Judge on behalf of Trial Chamber I of the International Criminal 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) of the Rome Statute (“Statute”), rule 134(3) of the Rules of Procedure and Evidence and regulation 23(1)(d) of the Regulations of the Court (“Regulations”), issues this decision on the “Urgent Prosecution’s motion seeking clarification on the standard of a ‘no case to answer’ motion” dated 8 June 2018 (“Prosecutor’s Request”).¹

I. Procedural background

1. On 9 February 2018, the Chamber issued its “Order on the further conduct of the proceedings” (“First Order”).²
2. On 19 March 2018, in compliance with the First Order, the Prosecutor filed her “Mid-Trial Brief” (“Trial Brief”),³ providing the narrative of her case with reference to the evidence submitted.
3. On 23 April 2018, also in compliance with the First Order, the Defence for Mr Blé Goudé and the Defence for Mr Gbagbo filed their observations on the continuation of the trial proceedings.⁴ Both 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.
4. On 4 June 2018, the Chamber issued the “Second Order on the further conduct of the proceedings” (“Second Order”), *inter alia* ordering the Defence

¹ ICC-02/11-01/15-1179.

² ICC-02/11-01/15-1124.

³ “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.

⁴ “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.

“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” and the Prosecutor and the LRV to file their responses, no later than 27 August 2018, “in accordance with the same modalities”.⁵

5. On 8 June 2018, the Prosecutor’s Request was filed. The Prosecutor submits that, “given the diverging positions of the Parties”, it is necessary for the Chamber “to provide guidance on the applicable standard of a ‘no case to answer’ motion to assist the Parties in helping the Chamber with focused submissions and avoiding unnecessary analyses on matters inappropriate for a half-time submission”. More specifically, the Prosecutor requests clarification whether and to what extent “the range of principles elaborated in the *Ruto* case applies”, making also reference to sections in the Defence’s responses to the Trial Brief which, in her view, would be inconsistent with the standard set forth in that precedent.
6. Also on 8 June 2018, the Defence for Mr Gbagbo filed its “*Demande de rejet in limine de la « Urgent Prosecution’s motion seeking clarification on the standard of a “no case to answer” motion» (ICC-02/11-01/15-1179)*” (“Mr Gbagbo’s Request”), requesting the Chamber to dismiss the Prosecutor’s request *in limine*.⁶
7. On 11 June 2018, by email,⁷ the Defence for Mr Blé Goudé indicated that it joined Mr Gbagbo’s Request.
8. Also on 11 June 2018 by email,⁸ the Prosecutor indicated that Mr Gbagbo’s Request amounted to a response to the merits of her Request, as such to be rejected, and that she would not respond to it.

⁵ ICC-02/11-01/15-1174.

⁶ ICC-02/11-01/15-1180.

⁷ Email sent from Counsel for Mr Blé Goudé to the Chamber, parties and participants at 10:27 hours on 11 June 2018.

II. Determinations

9. At the outset, the Single Judge notes that, contrary to regulation 23(1(d) of the Regulations, the Prosecutor does not detail “the articles, rules, regulations or other applicable law relied upon” in submitting her Request, thus making it unclear on what legal basis such Request is filed. The Single Judge further notes that – as highlighted by the Defence for both Accused - the Prosecutor’s Request addresses for the first time statements contained in the Defence’s responses to the First Order. The Single Judge will nevertheless consider the Prosecutor’s Request, in the interest of dispelling uncertainty and of the overall efficiency of the proceedings.
10. The Single Judge notes that, as pointed out by the Prosecutor, Mr Gbagbo’s Request already contains a response to the merits of the Prosecutor’s Request. Accordingly, no additional submissions are necessary for the purposes of this decision.
11. The Prosecutor’s Request is premised on the assumption that, in issuing the First and the Second Order, this Chamber has decided to follow the steps taken by Trial Chamber V(a) in the *Ruto* and *Sang* case. This assumption amounts to a mischaracterisation of the procedural steps devised by this Chamber, which have been tailored to the specific circumstances of these proceedings.
12. The Single Judge notes that the Second Order represents a subsequent, pragmatic step to the First Order, made necessary and appropriate by the Defences’ responses to the Trial Brief; in particular, by their submission that,

⁸ Email sent by the Senior Trial Lawyer to the Chamber, parties and participants on 11 June 2018, at 17:36 hours.

in their view, there is no evidence at this stage to sustain a conviction of either Accused. As the First Order was meant to provide the Prosecutor with an opportunity to provide a comprehensive narrative of her case as she sees it in light of the evidence on the record, with ample margins of discretion and flexibility as to how to shape such narrative, the Second Order was - and is - aimed at providing the Defence with an equally flexible opportunity to illustrate in detail their contention that such evidence is not suitable to sustain a conviction.

13. In light of the above, the Single Judge takes the view that it is not necessary to take a position either as to the standards adopted by Trial Chamber V(a) or to the application of those principles in the final decision in that case. The Single Judge only notes that, the *Ruto* and *Sang* case being the only precedent in the jurisprudence of this Court to this day, the Prosecutor's statement to the effect that the standards enunciated in it are representative of the jurisprudence at the Court sounds far-fetched.
14. The Prosecutor is obviously entitled to think that "[i]n the present case, there is sufficient evidence for the Defence to answer to, as the Prosecution submitted relevant and reliable evidence for each count both at the level of the perpetration of the crime through crime base witnesses and other actors on the ground, as well as linkage evidence demonstrating the conduct, knowledge and/or the intent of the Accused." The Defence, however, is likewise entitled to challenge this view and to think that this is not the case, whether in whole or in part. The Chamber, having received the Defence responses to the Trial Brief, both pointing to the inadequacy of the evidence, issued the Second Order with a view to providing the Defence with an opportunity to explain and illustrate in detail the elements supporting their position. For the purposes of the submissions to be filed in compliance with

the Second Order, and as stated in it, the Defence has the discretion “to decide how their submissions will be organised” and to identify and address “the issues for which, in their view, the evidence presented by the Prosecutor is not sufficient to sustain a conviction”.

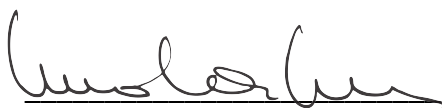
15. The Single Judge takes note of the position of the Defence teams, as mirrored in Mr Gbagbo’s Request. In particular, it takes note of the statement to the effect that the Second Order is clear and that, accordingly, no additional guidance is required from the Defence at this stage for the purposes of complying with it. Under these circumstances, the concerns raised by the Prosecutor’s Request are not warranted.

16. As clearly decided in the Second Order, once the Defence will have submitted their observations, the Prosecutor will have the opportunity to respond, both in her written submissions and in the course of the discussion at the oral hearing, which will provide all parties with ample opportunity to make all the submissions they consider necessary and appropriate at that stage. Stating, as the Prosecutor does, that she will require to be afforded “a substantial amount of additional time”, should the need to address issues of qualitative assessment of the evidence arise, amounts, at this stage, to a speculative assertion.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE, HEREBY

REJECTS the Prosecutor's Request.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser, Single Judge

Dated 13 June 2018

At The Hague, The Netherlands