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PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

Public

Prosecution's response to the Defence « *Demande afin que soit organisée la continuation de l'audience orale de confirmation des charges* »

Source: Office of the Prosecutor

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

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Introduction

1. On 3 February 2014, the Defence filed its *Demande afin que soit organisée la continuation de l'audience orale de confirmation des charges* ("Defence request").¹ The Defence requests that the current calendar for further proceedings be altered to include a continuation of the oral hearing so that further oral submissions can be made.

2. The Prosecution is content with the procedure established by the Chamber. However, in principle, the Prosecution is not opposed to further oral submissions being made by the parties and participants, provided that the scope of such further oral hearing is focused and relevant to issues that will assist the Chamber in its conduct of the confirmation of the charges proceedings, such as submissions pertaining to the additional evidence.² Scheduling a further oral hearing will undoubtedly impact on the scheduling of the remaining stages of the confirmation hearing. The Prosecution leaves it to the Chamber to weigh the competing interests and decide if it is appropriate in all of the current circumstances to grant the Defence request.³

¹ ICC-02/11-01/11-599.

² Evidence that has been added to the parties' lists of evidence subsequent to the conclusion of the previous oral hearing of February 2013.

³ The Prosecution notes that the current circumstances would include the fact that the Chamber is concurrently considering a Defence request for an extension of time to respond to the Amended DCC and file its list of evidence; see: ICC-02/11-01/11-603.

Submissions

As to the scope of a further oral hearing

3. The Prosecution submits that if a further oral hearing is ordered, the Chamber should also provide directions limiting the expected scope of the further oral submissions to be presented by the parties and participants. For example, this could include oral submissions as to the additional evidence⁴ or any other issues for which the Chamber determines it would likely be assisted by further oral submissions. Conversely, repetition of oral submissions already made at the previous oral hearing, or oral submissions on issues recently litigated in writing should be specifically excluded.
4. The Prosecution submits that there is no requirement to hold a further oral hearing, nor is there a legal impediment. Consequently the issue, including the scope of the hearing, if scheduled, falls within the ambit of the Chamber's discretion and should be decided on the basis of the interests of justice in all of the circumstances.

As to the timing of a further oral hearing

5. If the Chamber decides that it is appropriate to schedule a further oral hearing, the Prosecution submits that it should re-issue a new calendar. Any hearing would have to be scheduled a reasonable amount of time after the Defence has disclosed to the Prosecution the evidence it intends to present, and filed its amended list of evidence.

⁴ *Supra*, footnote 2.

6. Furthermore, the Prosecution submits that a further oral hearing, if scheduled, ought to occur prior to the submission of final written arguments by the parties and participants.

As to the content of the Defence request

7. The Prosecution wishes to inform the Chamber that in submitting and responding to written submissions it makes every effort to prepare and present filings that are concise and that respond only to the relevant issues being litigated. However, in certain circumstances, such as the present one where the Defence misrepresents Prosecution submissions and/or decisions of the Chamber, the Prosecution believes a response is warranted.
8. At paragraph 17 of its request, the Defence has accused the Prosecution of trying to minimise the role of the Judges of the Chamber by attributing a “gatekeeper function” to the Chamber. This is misleading and clearly does not reflect the Prosecution’s actual position as presented in the entire paragraph referenced by the Defence⁵ - from which the Defence conveniently quotes only two words. The Prosecution also notes that the Chamber itself referred to its “gatekeeper function” in its Decision adjourning the hearing on the confirmation of charges.⁶
9. At paragraph 19 of its request, the Defence attributes to the Chamber the following statement: *“Elle constatait que le Procureur n’avait apporté aucun élément probant au soutien de ses accusations ; par conséquent, elle ne confirmait pas les charges.”* This statement is blatantly inaccurate. In reading such a statement, one must conclude that the Defence does not understand the decision of the

⁵ ICC-02/11-01/11-474, para. 56.

⁶ ICC-02/11-01/11-432, para. 18.

Chamber, as the only alternative is that it has deliberately chosen to misstate the Chamber's ruling.

10. The Prosecution finally notes paragraphs 43 to 45 of the Defence request. The Defence purposefully ignores the decision of the Single Judge of 27 January 2014, in which she notably ruled that the Prosecution's Document Containing the Charges ("DCC") did not exceed the word count and that the three reports and the cover filing to the DCC, as referred in the Defence request, were not to be considered as forming part of the DCC.⁷
11. The Prosecution recalls that Articles 7, 24 and 27 of the Code of Professional Conduct⁸ obligate counsel to "act fairly, in good faith and courteously" and to "not deceive or knowingly mislead the Court". The Defence should not be permitted, to abuse the proceedings before the Court to advance such submissions with full awareness of their inaccurate nature.

⁷ ICC-02/11-01/11-595.

⁸ ICC-ASP/4/Res.1.

Conclusions

12. The Prosecution is content with the procedure established by the Chamber. However, in principle, the Prosecution is not opposed to further oral submissions being made by the parties and participants, provided that the scope of such further oral hearing is focused and relevant to issues that will assist the Chamber in its conduct of the confirmation of the charges proceedings.



Fatou Bensouda, Prosecutor

Dated this 5th day of February 2014

At The Hague, The Netherlands