

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/11-01/11
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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 '*Corrigendum de la « Requête urgente aux fins d'organisation d'une Conférence de mise en état »*'

Source: Office of the Prosecutor

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

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Introduction

1. On 30 January 2014, the Defence filed its *Requête urgente aux fins d'organisation d'une Conférence de mise en état*¹ ("Defence request"). The Defence requests that a status conference be held to discuss five items; and that the said status conference be scheduled for 7 February 2014.
2. The Prosecution submits that the Defence request for a status conference at this stage of the proceedings is unnecessary and consequently it should be dismissed. In the alternative, the Prosecution submits that if the Chamber decides that a status conference should be held, then the "scope" or items for discussion should be limited to those items that are appropriate in all of the circumstances.

Submissions

As to the need for a Status Conference on 7 February 2014

3. The Defence suggests that during a status conference the parties and participants "[...] pourraient s'entendre sur la manière la plus adéquate de poursuivre la procédure de confirmation des charges, [...]".² The Prosecution observes that the procedure to be followed for the continuation of the confirmation hearing has been established, monitored and updated as needed by the Chamber since its decision of 3 June 2013³ to adjourn the confirmation hearing. Most recently this procedure, with steps to be taken and deadlines, was set out in the Chamber's decision of

¹ ICC-02/11-01/11-597; and on 31 January 2014, the Defence filed its *Corrigendum de la « Requête urgente aux fins d'organisation d'une Conférence de mise en état »*, see ICC-02/11-01/11-597-Corr.

² ICC-02/11-01/11-597-Corr, para. 45.

³ ICC-02/11-01/11-432.

17 December 2013.⁴ Consequently, there is no need to have a status conference for the purpose of “agreeing on the procedure” when that procedure has already been established.

4. The Defence request also suggests that a status conference “[...] *conduirait à un gain de temps considérable en permettant un vrai débat global sur les questions en suspens et en évitant la soumission de nombreuses requêtes, réponses et répliques qui ne feraient qu'alourdir la procédure.*”⁵ Yet it is unclear how this saving of time will be achieved; nor is clear why the suggested issues or topics of discussion cannot be efficiently dealt with in writing. As noted below in paragraph 8, one of the “items”⁶ on the list of topics to be addressed is already the subject of a separate written application.⁷ Additionally, the Defence has recently filed a further written application⁸ to address another one of the “items”⁹ on the list of topics. Consequently, the Prosecution submits that this Defence argument is insufficient to convene a status conference.

As to the suggested issues to be discussed

5. The Prosecution submits that if the Chamber decides to schedule a status conference, then the issues to be addressed should be limited to only those issues that are appropriate for discussion at this stage in the proceedings.

⁴ ICC-02/11-01/11-576.

⁵ ICC-02/11-01/11-597-Corr, para. 46.

⁶ ICC-02/11-01/11-597-Corr, page 12: “*La teneur du DCC pour vérifier s’il est conforme aux instructions de la Chambre Préliminaire et aux exigences du Statut ;*”.

⁷ ICC-02/11-01/11-598-Corr-Red.

⁸ ICC-02/11-01/11-599.

⁹ ICC-02/11-01/11-597-Corr, page 12: “*La nécessité d’organiser une véritable audience orale de confirmation des charges ;*”

6. Regarding the first issue listed in the Defence Request,¹⁰ the Prosecution observes that the possibility of further oral submissions is an issue that was considered by the Chamber in its decision of 3 June 2013.¹¹ However, it was noted that this issue would be dealt with “[...] at the request of the participants or on its own motion [...]”¹². As such, this appears to be an issue that could properly be addressed by way of a written request; which the Defence has recently filed.¹³ Alternatively, it could be discussed orally if the Chamber was to hold a status conference.
7. Regarding the second¹⁴ and third¹⁵ issues listed in the Defence Request, the Prosecution submits that these issues could also be addressed in writing. As mentioned above, the Chamber adopted on 17 December 2013 a new schedule. The Defence can make a written application for an extension of the set deadlines pursuant to Regulation 35 of the Regulations of the Court. Alternatively, they are also issues that could be discussed orally if the Chamber was to hold a status conference.
8. Regarding the fourth issue listed by the Defence,¹⁶ the Prosecution observes that this is essentially the same issue that is raised by the Defence in a written application filed concurrently with the Defence request (“Concurrent request”).¹⁷ The Prosecution was ordered to submit its response by 7 February 2013.¹⁸ If this

¹⁰ ICC-02/11-01/11-597-Corr, page 12: “*La nécessité d’organiser une véritable audience orale de confirmation des charges ;*”.

¹¹ ICC-02/11-01/11-432, para. 47.

¹² ICC-02/11-01/11-432, para. 47.

¹³ ICC-02/11-01/11-599.

¹⁴ ICC-02/11-01/11-597-Corr, page 12: “*Le temps dont devrait bénéficier le Président Gbagbo pour préparer adéquatement sa défense, en conformité avec l’Article 67(1)(b) du Statut de Rome ;*”.

¹⁵ ICC-02/11-01/11-597-Corr, page 12: “*Les moyens et le temps dont devrait disposer la défense pour enquêter afin que le Président Gbagbo puisse exercer son droit de contester les charges, de contester les preuves du Procureur et de présenter des éléments de preuve en vertu de l’Article 61(6) du Statut de Rome ;*”.

¹⁶ ICC-02/11-01/11-597-Corr, page 12: “*La teneur du DCC pour vérifier s’il est conforme aux instructions de la Chambre Préliminaire et aux exigences du Statut ;*”.

¹⁷ ICC-02/11-01/11-598-Corr-Red.

¹⁸ Deadline of 7 February 2014 communicated to the Prosecution by e-mail from the Chamber on 31 January 2014.

issue is to be discussed during a status conference, to be held as suggested by the Defence on 7 February 2014, the Prosecution may not be in a position to file its response in order for the Chamber to have available the written submissions of both parties in advance of the status conference. Therefore, the Prosecution submits that if the Chamber was to hear the parties on this issue during a status conference, it should be scheduled after the 7 February 2014.

9. Regarding the last issue listed in the Defence Request,¹⁹ this is not an “issue” that needs to be discussed at a status conference, or otherwise since the format of written submissions to the court is governed by the Regulations of the Court, notably Regulation 36.

Conclusions

10. For the reasons set out above, the Prosecution submits that the Defence request should be dismissed. Alternatively, if the Chamber decides to convene a status conference it should limit the “issues” to those items that are appropriate in all of the circumstances.



Fatou Bensouda, Prosecutor

Dated this 3rd day of February 2014
At The Hague, The Netherlands

¹⁹ ICC-02/11-01/11-597-Corr, page 12: “*Le format le plus approprié concernant les soumissions écrites de la défense en réponse au DCC.*”