

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

No: ICC-02/11-01/15
Date: 24 September
2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Bertram Schmitt

SITUATION IN COTE D'IVOIRE

IN THE CASE OF
THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLE GOUDE

Public

Defence Response to "Prosecution's request to designate a person authorised to witness a declaration under rule 68(2)(b) of the Rules of Procedure and Evidence," (ICC-02/11-01/15-222)

Source: Defence of Mr Charles Blé Goudé

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

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I. Introduction

1. Further to the “Prosecution’s request to designate a person authorised to witness a declaration under Rule 68(2)(b) of the Rules of Procedure and Evidence” (“the Prosecution Request”),¹ and the email from Trial Chamber I’s (“the Chamber”) dated 22 September 2015 to shorten the time limit for any response to 24 September 2015, the Defence of Charles Blé Goudé (“the Defence”) hereby submits its response to the Prosecution Request.

II. Submissions

2. The Defence takes note that the Prosecution Request makes no mention of the witnesses for which it anticipates making requests to introduce prior recorded testimony under Rule 68(2)(b) of the Rules of Procedure and Evidence (“the Rules”). Nonetheless, the Defence respectfully requests that the Chamber reject the Prosecution’s request because the designation of any person authorised to witness declarations presupposes that prior recorded testimony shall be introduced in the instant case. Such a presumption is in contravention with, the principle of the “primacy of orality” as enshrined by Article 69(2), and curtails the minimum guarantee Article 67(1)(e) provides to Mr. Blé Goudé, which is to confront the witnesses against him. As the Prosecution has yet to submit a Rule 68 application, a substantive legal debate regarding the prejudice to Mr. Blé Goudé cannot occur until an application *in concreto* has been filed.
3. In addition to presupposing the introduction of prior recorded testimony, the Prosecution request is premature since its basis is the most recent amendment of Rule 68 of the Rules, which was adopted nearly two years after the arrest

¹ ICC-02/11-01/15-222.

warrant was issued against Mr. Blé Goudé.² An adversarial debate on the retroactive application of the amendment to Rule 68 may not occur without a Rule 68 application being filed *in concerto*, which has yet to take place.

4. In its submissions, the Prosecution states that the “logistical arrangements necessary for obtaining the required declarations” form the basis for asking the Chamber to expedite the granting of the requested relief. However, such logistic arrangements serve no purpose unless the Chamber, after examining each Prosecution’s application to introduce prior recorded testimony under Rule 68(2) of the Rules, determines to allow the introduction of such testimony for a given witness. Given that the Prosecution may file at any time Rule 68 applications for witnesses not expected to testify,³ the Defence finds it anomalous that a request to designate a person authorised to witness Rule 68(2)(b) declarations precedes the filing of any specific Rule 68(2)(b) application.⁴ Rule 68(2)(b)(ii) clearly states that accompanying declarations must be made “*reasonably* close in time to when the prior recorded testimony is being submitted” (*emphasis added*). Since Rule 68(2)(b)(ii) already takes into account the logistic arrangements that Prosecution must make to obtain the accompanying declarations, this premature request should not be granted.

5. The Defence would like to recall that the Chamber in its “Directions on the conduct of the proceedings,” emphasized that the introduction of prior recorded testimony is an *exception* to the “primacy of orality” and the right of the accused to examine or have examined the witnesses against him under Article 67(1)(e).⁵ By making this request, the Prosecution attempts to make the

² The amendment was adopted by the Assembly of State Parties on 27 November 2013. Resolution ICC-ASP/12/Res.7.

³ ICC-02/11-01/15-205, para. 56.

⁴ ICC-02/11-01/15-205, para. 56.

⁵ ICC-02/11-01/15-205, para. 54.

introduction of prior recorded testimony under Rule 68(2)(b) the rule, and lauds its merits by stating that it “makes a more concise and streamlined presentation of evidence.”⁶ However, in considering whether to admit prior recorded testimony under Rule 68(2)(b), the swift administration of justice is not a decisive factor that the Chamber is to consider.⁷ Moreover, in its adjudication of any Rule 68 application, the introduction of such testimony may never be admitted if it is contrary to the rights of the accused.

6. Based on the timing of this request, it is not unlikely that the underlying intention of the Prosecution is to have a designated person assigned as soon as possible in order to justify the filing of all its potential Rule 68(2)(b) applications at the same time. Such a scenario would run contrary to the nature and spirit of Rule 68, since it would seriously prejudice the Defence in its ability to adequately respond to such action within the fifteen day limit ordered by the Chamber.⁸ Thus, for this reason, the Request should also be rejected.

RELIEF SOUGHT

For the foregoing reasons, the Defence respectfully prays the honourable Chamber to:

Reject the Prosecution Request.

⁶ ICC-02/11-01/15-222, para. 3

⁷ See Rule 68(2)(b)(i) of the Rules.

⁸ ICC-02/11-01/15-205, para. 56



A handwritten signature in dark ink, appearing to read 'Mr. Knoop', is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mr. Knoop, Lead Counsel and Mr. N'Dry, Co-Counsel

Dated this
24 September 2015
At The Hague, the Netherlands