

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

No: ICC-02/11-01/15

Date: 1 October 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 observations and objections on the conduct of proceedings

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. Pursuant to the “Order on the Commencement of Trial,”¹ and Trial Chamber I’s (“the Chamber”) further instructions given to the parties and participants during 25 September 2015 Status Conference,² the Defence of Charles Blé Goudé (“the Defence”) hereby submits its observations and objections concerning the conduct of proceedings.
2. For the purposes of clarity, the Defence shall make first its observations, and secondly its objections, which are organized around the Chamber’s “Directions on the conduct of proceedings” (“the Directions”).³ Therefore, the Defence will raise its issues with the Directions by responding to the relevant headings contained therein in the order in which they appear. Where the Directions omit certain matters, which the Defence esteems must be resolved prior to the start of trial, such submissions shall be provided in a separate section provided below. The Defence further submits that the observations and objections contained herein do not preclude the Defence from exercising its right to address other issues arising from the conduct of the proceedings in the future under Rule 134 of the Rules of Procedure and Evidence.

II. Submissions

A. Defence Observations on the Directions

a. General Issues concerning testimony: Section v: Use of material during the examination of a witness

3. The Defence respectfully submits that a provision regulating any amendment to the list of material to be used during the examination of a witness should be included in the Directions. The Defence in its submissions on the conduct of proceedings proposed that the Chamber grant requests to amend these lists

¹ ICC-02/11-01/15-58, para. 28.

² ICC-02/11-01/15-T-4-ENG, p. 37, lines, 11-18.

³ ICC-02/11-01/15-205.

of materials only upon the showing of good cause.⁴ A clear legal standard to guide the parties should be indicated before the commencement of the trial so as to enable them to respond efficiently and effectively.

b. General Issues concerning testimony: Section vi: Using statements to refresh a witness' testimony

4. The Defence takes note that the Chamber has decided to adopt a procedure similar to the one in the *Prosecutor v. Katanga*,⁵ when determining whether to allow the parties to refresh the memory of a witness. The Chamber did not consider the merits of including a supplementary condition, which requires that the statement used to refresh memory be related to statements already introduced into evidence.⁶ By further circumscribing the permissibility of this procedure, the Defence believes that it prevents the parties from using it as a tool for circumventing the prohibition on using leading questions during the examination of a witness by the calling party.⁷

c. Private and Closed Session

5. The Directions contain non-specific instructions regarding private and closed sessions, in which parties are reminded that witness testimony is to be given in public, and that requests for such sessions should specify the topics covered. The Chamber did not address the Defence's proposal to include a concrete provision regarding the use of private or closed session when it endangers the life of the Accused. This will reinforce the Court's obligations not only to protect victims and witnesses, but also the accused.

B. Defence objections to the Directions

a. Prior Recorded Testimony

⁴ ICC-02/11-01/15-77, para. 22 citing the *The Prosecutor v. Ruto & Sang*, ICC-01/09-01/11-847-Corr, para. 22.

⁵ See ICC-02/11-01/15-77, para. 33.

⁶ See *ibid.*, para. 34.

⁷ See *ibid.*, para. 33.

6. The Defence observes that the Chamber has established two distinct procedures for parties to make applications under Rule 68. In the event that the witness is scheduled to appear, Rule 68 application must be filed within 21 days of the date of the witness' appearance. Given that Rule 68(2) applications pertain to witnesses not present before the Trial Chamber, the Defence avers that the same procedure cannot apply to these applications. However, the current Directions leave to the Prosecution unbridled discretion to file its Rule 68(2) applications at any time. In the context of the present case, in which the Prosecution has forewarned the parties and the Chamber of numerous Rule 68(2) applications it wishes to file,⁸ the Defence respectfully asks the Chamber to set parameters as to the timing of such requests.
7. The Defence proposes that the Chamber require that the parties submit such applications 21 days before the party wishes to introduce the prior recorded testimony. This safeguard would allow the Defence to adequately respond to such requests, which have a significant impact on the fundamental right of Mr. Blé Goudé to examine the witnesses against him under Article 67(1)(e). The Defence respectfully submits that if it receives numerous Rule 68(2) filings at once, it will not be in a position to make a thorough analysis of the impact of such individual applications on the rights of the Defence within the limited fifteen day time limit. The Defence would prefer receiving such applications, if it must, on a rolling basis.

III. Conclusion

8. The Defence respectfully submits the aforementioned submissions pursuant to the Chamber's order, and prays that the Chamber adopt its proposed modifications.

⁸ ICC-02/11-01/15-222, para. 3; ICC-02/11-01/15-114, para.6.



A handwritten signature in dark ink, appearing to read 'Mr. Knoop', is centered within a rectangular box. The signature is written in a cursive style with a long horizontal flourish extending to the right.

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

Dated this
1 October 2015
At The Hague, the Netherlands