

1 International Criminal Court
2 Trial Chamber I
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé
5 Goudé - ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Olga Herrera Carbuccion and Judge Geoffrey
7 Henderson
8 Trial Hearing - Courtroom 1
9 Monday, 6 March 2017
10 (The hearing starts in open session at 9.45 a.m.)
11 THE COURT USHER: [9:45:47] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [9:46:12] Good morning.
15 Good morning especially to you, Mr Raimondo. It's the first time that you're here.
16 Before giving the floor to the Defence of Mr Gbagbo, because I think I was advised
17 that they want to address the Court, the Chamber -- Mr Blé Goudé, yes, sorry, sorry.
18 Yes, I was advised that -- I don't hear myself as well. So there must be something.
19 Yes, now, okay, I start again. Good morning.
20 Good morning to you, Mr Raimondo.
21 Before giving the floor to the Defence of Mr Blé Goudé, who wants to address the
22 Chamber as I was advised, I would just like to deal with a matter which has a certain
23 urgency regarding -- because it concerns the next witness, and I'm referring to the two
24 filings, request for extension of time pursuant to Regulation 35, which were filed on
25 24 February and 3 March.

1 As far as the first request of 24 February concerns, we have received the filings, the
2 submissions by the Defence for Mr Gbagbo, but not yet the Defence for Mr Blé Goudé,
3 and we are missing obviously the responses to those filings by both Defence teams on
4 the second request, which was filed as I said on 3 March.

5 So I would like, as they are quite urgent, to have these submissions by the end of this
6 day, say, just we will end the questioning maybe 15 minutes before 4 o'clock so to
7 give you time for your submissions on these two requests for an extension of time
8 pursuant to Regulation 35 by the Office of the Prosecutor.

9 What is the matter, Mr MacDonald?

10 MR MACDONALD: [9:49:11] Good morning, your Honour.

11 PRESIDING JUDGE TARFUSSER: [9:49:13] Good morning.

12 MR MACDONALD: [9:49:13] Mr President, your Honours, I just want to indicate to
13 the Chamber that it is our intention to send a decision in the Ntaganda case regarding
14 the management of such requests and the approach that has been adopted in that case.
15 I should have the decision in the next few minutes, and I'll forward it by email so that
16 it can be added to our pleadings. So in other words, I am seeking to amend orally
17 just to include that decision, and then my colleagues will be in a position to have it for
18 their oral pleadings, I understand, later this afternoon. Thank you.

19 PRESIDING JUDGE TARFUSSER: [9:50:05] Thank you very much.

20 We take note of this.

21 So I would ask the Defence teams to make their submissions by the end of the day
22 today of the hearing on these two requests, because we have to decide them latest
23 tomorrow in order for them to be meaningful, the decision to be meaningful.

24 Now I give the floor to Mr Knoops to address the Chamber on something, I don't
25 know. Mr Knoops.

1 MR KNOOPS: [9:50:47] Yes, good morning, Mr President, your Honours. We
2 would like to address the Court briefly on an issue which was served to the Defence
3 teams on Friday afternoon at quarter to 5, which concerns the position of the
4 supposed counsel for the witness who has yet to come. And in light of the
5 submissions we would seek leave from the Chamber that Mr Raimondo would leave
6 the courtroom in order to have the Defence address the Chamber, because the request
7 we have to the Chamber might also affect his position and the potential inquiry we
8 would ask from the Chamber into his position.

9 So my first submission is that we, Defence team of Blé Goudé, and I just learned that
10 also Mr Altit will join me in this submission, we would ask the Court to request Mr
11 Raimondo to not be part of the discussions at this very moment, maybe later, but I
12 think it's appropriate that we first address the Chamber on the way we think we
13 should proceed with this witness and the supposed counsel.

14 PRESIDING JUDGE TARFUSSER: [9:52:15] Well, at this point in time as I don't
15 exactly know what the matter is, Mr Raimondo, I think I, without wanting to be
16 impolite, I would ask you to leave the courtroom. Then we'll see how it develops
17 and we will decide accordingly. Thank you very much. If you want -- well, it's
18 okay.

19 (Mr Raimondo exits the courtroom)

20 PRESIDING JUDGE TARFUSSER: [9:52:59] Mr Knoops.

21 MR KNOOPS: [9:53:01] Yes, Mr President. It was not a matter of impoliteness if
22 that's being perceived by Mr Raimondo. It's just a matter of making the argument
23 and leaving the door open for further discussions.

24 Mr President, the Court is probably aware that on Friday afternoon at quarter to 5 the
25 Chamber and Defence teams were served by the Prosecution with an email saying

1 that the counsel, the anticipated counsel for Witness P-11, Mr Fabián Raimondo, was
2 hired in December 2012 as an independent counsel by the OTP in the present case.

3 So we are speaking here not as a counsel for the OTP in general, but specifically in the
4 present case.

5 We also learned, Mr President, and that makes the argument I think even more
6 pertinent, that the anticipated counsel for P-11 will also potentially appear as counsel
7 for P-10, which is yet to come.

8 Well, needless to say, Mr President, that both P-11 and P-10 are, I will not use the
9 word of Mr Altit "important," but I'll use the word "relevant" witnesses for the
10 Prosecution case, although I'm mindful of the multi-interpretation of the word
11 "importance."

12 Those two witnesses are of course quite relevant for the Prosecution case, and it's our
13 submission, Mr President, that despite the explanation the Prosecution gave in its
14 email that the team never discussed, the Prosecution team never discussed the facts of
15 the case with Mr Raimondo, including for the execution of his mandate, that's still a
16 matter of conflict of interests or potential conflicts of interest arise, and that in light of
17 the relevance of P-11 and P-10, the relevance of those witnesses for the Prosecution
18 case, even the appearance of a conflict of interest should be evaded.

19 Now, the Prosecution has indicated, Mr President, in its email that the mandate of Mr
20 Raimondo -- and the email doesn't learn till what time his mandate extended, it just
21 says he was hired in December 2012 as an independent counsel in the present
22 case -- that his mandate was to review potentially privileged material on a laptop
23 being seized from Prosecution Witness P-69, who in the meantime has been
24 withdrawn by the Prosecution.

25 And the Pre-Trial Chamber I in January 2013 issued a decision based upon the

1 assessment of Mr Raimondo, apparently he came to the opinion that those documents,
2 17 documents were supposed to be privileged and the Chamber rejected that advice
3 or that assessment by Mr Raimondo saying that those documents were considered to
4 be non-privileged or potentially privileged.

5 That being said, Mr President, this implies that in order to assess documents being
6 privileged or not, that implies that Mr Raimondo had to delve of course into certain
7 facts of the case, because otherwise he would not be in a position to forward an
8 intelligent advice as to the privileged or non-privileged nature of 17 documents which
9 was seized from a laptop of Witness P-69.

10 In other words, the Prosecution might not have discussed the facts of the case
11 vis-à-vis with Mr Raimondo, but the fact is there that this person played an important
12 role for the Prosecution team in advising the Prosecution team at the least with
13 respect to certain relevant documents.

14 The consequence of this analysis, Mr President, is that the Chamber, the Prosecution,
15 nor the Defence can exclude the simple possibility that this counsel in his advice
16 vis-à-vis Rule 74 might be preconceived or even biased or even influence, potentially
17 influence the witness in the context of Rule 74 when the witness would seek advice
18 from counsel in this regard. We cannot exclude the possibility and no assurance
19 from this counsel or from anyone in this Court can exclude this psychological
20 phenomenon that this counsel can, in giving advice to this witness, influence the
21 witness based upon, for instance, what he has learned during his functioning as
22 independent counsel for the OTP in the present case in terms of the Prosecution
23 theory, et cetera.

24 So also in light of the fact that this witness will appear as counsel for P-10 after P-11,
25 we seek relief from the Chamber in this regard such that, first, the Chamber inquires

1 indeed whether there is no conflict of interest in objective, in an objective manner or,
2 at the least if the appearance of a conflict of interest is not existing.

3 And because this is a very fundamental basic rule of advocacy, that any conflict of
4 interest should be avoided specifically when it concerns these type of witnesses and
5 this could affect the fairness of the proceedings and the truth-seeking nature of this
6 trial, that the Chamber in our submission is at liberty to first assess indeed the
7 statement of the Prosecution that there is no conflict of interest for this counsel to
8 represent P-11 and either P-10 in the execution of his mandate pursuant to Rule 74.

9 Now, Rule 74 has been a matter of debate in this trial with previous witnesses and the
10 Court has seen that the role of counsel for a witness in the context of Rule 74 is not to
11 be underestimated. Previous witnesses have repeatedly consulted with counsel in
12 the context of Rule 74 and, therefore, it's even more pertinent that any conflict of
13 interest should be avoided when such a counsel advises a witness of the relevance of
14 P-10 and P-11.

15 Last thing, Mr President, we don't have access as Defence to the documents which
16 underlie the decision of the Pre-Trial Chamber I on the assessment of the 17
17 documents which were identified by this counsel as being potentially privileged, nor
18 have we any further information as to what time frame this counsel was part of the
19 Prosecution team as independent counsel in the present case.

20 We wouldn't have any problem, Mr President, I think the problem would not have
21 arisen in this magnitude if this counsel would not have been involved in the specific
22 Ivory Coast case, so to speak, for President Gbagbo and Mr Blé Goudé. But now it's
23 clear, the Prosecution admitted -- and I have to say, two weeks ago we were notified
24 of the appointment of Mr Raimondo, that only Friday evening at quarter to 5 we were
25 served with this information; and, therefore, I apologise to the Chamber that this

1 potentially will cause again an argument before we can start, but we have no choice
2 and it's also our obligation, Mr President, as counsel for these defendants to ensure a
3 fair trial that we have to raise it. I hope the Chamber will understand it's not
4 anything we would like to do quite easily. But in this specific case with the interests
5 at stake in this case also in regard of the witnesses who are yet to come, it's a very
6 fundamental issue which has now been arisen, it might also affect the future of the
7 representation of witnesses which are yet to come before the Court.

8 Thank you very much. And I understand that Mr Altit will also join me in this
9 submission. Thank you, Mr President.

10 PRESIDING JUDGE TARFUSSER: [10:03:23] I would in any case have given the
11 floor also to the other parties. So I will do that also with the OTP.

12 Maître Altit.

13 MR ALTIT: [10:03:33] (Interpretation) Yes, thank you, your Honour. Your
14 Honours, I do wish to make a few remarks. First of all, we endorse the approach
15 and the request made by the Blé Goudé Defence team. I would like to say a few
16 words.

17 Now, first of all, and this is true, the appointment of the counsel was on the 15th of
18 February, I believe, and it was only Friday late in the day when we learned that this
19 particular counsel had already been involved in this case, and we really have no idea
20 exactly what his involvement was.

21 There are two considerations here that we must look at, two problems. First of all,
22 the potential conflict of interest between the previous commitment made by Mr
23 Raimondo to the OTP and his role as duty counsel to a witness; and the second
24 problem, which is far greater or seems to be much greater, the fact that he is both
25 duty -- that he's counsel to Peter and Paul, so to speak.

1 According to the OTP email that we received Friday, Mr Raimondo was hired in 2012
2 as independent counsel by the OTP. And I think there is a contradiction here.
3 Either he was hired by the OTP or he was independent counsel. But I think there is a
4 contradiction here and I do support, I support what Mr Knoops has pointed out, this
5 gentleman has become familiar with the case, he has reviewed all the information and
6 necessarily he will be in a position to advise the two witnesses upstream, so to speak,
7 because he has already had knowledge of incriminating information and, really, he's
8 working on both sides of the street, so to speak.

9 I wish to make reference to the Code of Professional Conduct for Counsel, paragraph
10 12(1)(b), and I will quote from this particular code of conduct, "A counsel does not
11 represent a particular client in a case if he has been involved in the case or has had
12 access as a member of the Court's staff to confidential information regarding the case
13 in which he seeks to appear."

14 And then it goes on to add that "This prohibition can be removed by the Court if it is
15 felt that it is in the interests of justice to do so."

16 So I think we do have a problem here. And this late disclosure of the OTP is such
17 that, well, the lack of action on the part of the duty counsel who could have at least
18 informed us or informed the Chamber that this was the situation and perhaps
19 something should have -- that he should have done something, and this could have
20 solved the problem upstream and we could have avoided these delays.

21 Now, secondly, your Honours, we have the whole matter of the conflict of interest.
22 This seems quite valid, this problem. And we have also learned that this particular
23 duty counsel will also advise P-10. He is duty counsel to both P-11 and P-10. And
24 in any event, P-11 will be appearing in just a few moments, and there may be a
25 question, a response, and this could lead to a definite problem that could be harmful

1 to P-10. And what will the duty counsel do? He is supposed to protect his witness.
2 Do you see what I'm driving at? We have a real problem here.
3 And it is also true that if someone puts a question to P-10 that may be prejudicial to
4 P-11, what advice will he give? This gentleman will be caught between a rock and a
5 hard place, no matter what his good will or -- so he will have to make a decision.
6 And obviously one of the witnesses will lose out. And this problem cannot be
7 avoided.
8 Thus, I believe you can see that we do have a substantive problem here and as such
9 Mr Raimondo cannot be duty counsel to P-10 and P-11. This is just not on.
10 The second problem, and we are not aware of the extent of the problem, we don't
11 have all the information, but along with the Blé Goudé Defence team, we too request
12 access to the 17 documents in question. We do not have the ERN numbers. These
13 documents should be declassified.
14 In any event, no matter what these documents may prove to be, no matter what, in
15 any event, Mr Raimondo must have analysed the documents in question to determine
16 whether they should be confidential or not. So we have an additional source of
17 conflict of interest.
18 So two layers of potential conflict of interest, that is far too much, and I believe that
19 the Chamber must take a decision quickly in this regard so that we can hear the
20 witness in due course quickly. If ever it were to be that a witness realises that his
21 counsel, the counsel appointed, well, that the duty counsel in question also has been
22 involved in the case earlier, this will lead to a whole series of problems. In any event,
23 I believe we do need to take a decision. We do not have a lot of time. There is no
24 point belabouring the point. I think everything is quite clear. Things are quite
25 clear.

1 One last remark, if you will allow me. We have requested the removal of the ex
2 parte classification of the application mentioned in the OTP's email so that we can
3 determine exactly what is at stake. In any event, no matter what the possible
4 decision, I think I can safely say that we have dual grounds for a potential conflict of
5 interest.

6 PRESIDING JUDGE TARFUSSER: [10:11:47] Thank you, Maître Altit.

7 The Office of the Prosecutor.

8 MR MACDONALD: [10:11:53] Thank you.

9 PRESIDING JUDGE TARFUSSER: [10:11:55] Okay.

10 MR MACDONALD: [10:11:55] Thank you, your Honour.

11 We have no objections to the reclassification of the submission in question because,
12 let's be very transparent, there is nothing to hide. Mr Altit will see that his name
13 appears on that list of privilege. It's a list of -- what happened, your Honours, the
14 CIV authorities seized the laptop of a person called P-0069, which we had access to.
15 We had the technology to enter the laptop. There was thousands of files. And the
16 Defence knows that because they have access to the report that indicates how we
17 accessed and we even disclosed emails that were found on 69's laptop. There is
18 nothing new here. I think we're just simply trying to grasp at straws to delay the
19 proceedings.

20 What happened is that in order to make sure that there were no privileged
21 information, we drew up a list of names of counsels working on the case at the time
22 that we were aware of or people that may be working on the case. We got hits, 200
23 and something of them. The independent counsel was never met by us. He was
24 hired by which would become the then, the now Director of Prosecutions, he was
25 given the list, these access to those emails or those contents, sorry, which we never

1 had access to, and after review said that potentially 17 could be privileged. We
2 never had access to those. It was sent to the Pre-Trial Chamber. Pre-Trial Chamber
3 looked into the matter, came back and said that there was no privileged information.
4 Therefore, we looked at those, and since last Friday I haven't looked at if any of the 17
5 were relevant in terms of Rule 77 or potentially exonerating or even incriminating in
6 any way that we would have relied on. So that was the mandate of Mr Raimondo.
7 Everything is explained in that filing how we went about to identify the initial 200
8 and something documents. The Chamber I think is familiar, anyway the President,
9 as how these things work having been on a different case where electronic material is
10 seized and then independent counsel is hired.
11 We did it on our own to safeguard the rights during our investigation of not having
12 access to privileged material potentially from a witness, not even the accused, a
13 witness, 69, a witness.
14 So, therefore, that is the background. Mr Raimondo was hired in December, towards
15 the end of December. I was not in the office at that moment. Someone else was
16 leading the case, I was on sabbatical. The mandate lasted less than a month, because
17 we filed before the PTC in January. Mr Raimondo should be here right now being
18 part of these discussions because he's better placed to answer what he did in terms of
19 his mandate. And now the Rule 74 mandate is very specific, your Honour. It's to
20 safeguard the interest, not the accused, not the accused, not the Prosecution's interests,
21 it's the interests of the witnesses that come and testify.
22 But more than that, we have all of us the obligation when your Chamber grants the
23 application of Rule 74 to safeguard the rights of the witness, and you've said so. So
24 Mr Raimondo is just there to ask, answer questions that this witness may have, legal
25 questions. But when it comes to the execution of the mandate in the courtroom,

1 you're the ultimate arbitrators, your Honour. The Prosecution also will raise the
2 issue and the Defence also raised the issue when they question that we should go into
3 closed session to have these things discussed.

4 Now, Rule 74 mandates are very specific, very limited, so it is in that sense that we
5 feel there is no conflict of interest, because you look at the mandate that was executed
6 for the OTP, you look at the mandate that will be executed now, they're completely
7 different mandates. They don't even overlap in any way.

8 Of course we learned this on Friday, your Honour. Yes, the mandate was given two
9 weeks ago. I think the first responsibility lies with Mr Raimondo himself. He
10 knows which mandate he has executed. Of course we could have raised the issue
11 earlier, but everything was under ex parte, so it's not something that was public to us.
12 And like I said, a lot of members were not on this team at the time and me, myself,
13 was not even involved in this at all. But it was dealt with by the Pre-Trial Chamber,
14 sorry.

15 So all in all, your Honour, I would submit that as for the 17 emails and the requests
16 for disclosure, that's our obligations, it has nothing to do with the Chamber to rule on
17 now lifting this. We can go and check if these 17 whatever happened, but if they
18 were of any relevance, they would have been disclosed pursuant to our obligations
19 under the Statute.

20 And second, we have no objections to the reclassification of the filing. The Defence
21 will see what was done and why it was done. But, again, it was to safeguard the
22 rights of a witness, which was 69.

23 PRESIDING JUDGE TARFUSSER: [10:18:33] Thank you very much.

24 Before briefly suspending the hearing for consultations with the colleagues, let me
25 just highlight two things. First, the correctness of how the Prosecutor acted, because

1 he told to the Chamber and to the parties things which the Chamber nor the parties
2 knew.

3 On the other side, obviously, the delay makes some trouble to this proceedings, but I
4 would now suspend the hearing until 11, 11.15, something like this, in order to
5 consult with colleagues and then come out with a decision. Thank you very much.

6 THE COURT USHER: [10:19:21] All rise.

7 PRESIDING JUDGE TARFUSSER: [10:19:42] I think we go to 11.30 so we start with
8 the second session, okay? Thank you very much.

9 (Recess taken at 10.19 a.m.)

10 (Upon resuming in open session at 11.33 a.m.)

11 THE COURT USHER: [11:33:56] All rise.

12 Please be seated.

13 PRESIDING JUDGE TARFUSSER: [11:34:15] Good morning once again.

14 This is the Chamber's oral ruling on the oral request submitted earlier by both
15 Defence teams, by both the Defence for Mr Blé Goudé and the Defence for Mr Gbagbo,
16 namely, that Mr Fabián Raimondo, appointed as Rule 74 counsel to Witness P-11 and
17 P-10, be disqualified from the role due to his appointment as so-called "independent
18 counsel" by the Office of the Prosecutor in December 2012 for the purposes of the
19 review of potentially privileged material pertaining to another witness in this case.

20 The Chamber, having noted the Prosecutor's email, sent last Friday, 3 March 2017 at
21 15.01, and having heard the oral submissions made by the parties earlier today, takes
22 the view that, whilst no concrete specific issue of conflict of interest can be detected or
23 substantiated at this stage, the previous involvement of Mr Raimondo in the case at
24 the Prosecutor's request does indeed require - and should have prompted - the utmost
25 caution; this notably in light of the paramount need not to allow that negative

1 perceptions be formed about the integrity of these proceedings, no matter how
2 tenuous or speculative those perceptions might be. The Chamber believes that the
3 very existence of a previous assignment of this counsel on behalf of the Prosecutor,
4 compounded by the belated disclosure of its existence, might indeed raise concerns in
5 terms of appearance of the integrity of the proceedings. In light of this, there is no
6 need for the Chamber to delve further into the details of the substance of Mr
7 Raimondo's previous assignment or involvement.

8 The strictness of the rules governing issues of conflict of interest is precisely aimed at
9 preventing that concerns as to the integrity of the proceedings might arise, even if
10 only as a matter of appearance.

11 By the same token, and also with a view of ensuring maximum transparency in line
12 with what is said by the Prosecutor, the Chamber deems it appropriate to grant the
13 Defence for Mr Gbagbo's request that the relevant documents be reclassified as
14 confidential.

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 For all these reasons, the Chamber decides that the appointment of Mr Fabián
21 Raimondo as Rule 74 counsel for Witness P-10 and P-11 is revoked with immediate
22 effect;

23 Orders the Registry to immediately appoint a new French-speaking counsel to
24 Witness P-11 for the purpose of Rule 74 -- and when I say "immediate," I say ad horas;
25 Orders the Registry to appoint a different counsel, a different Rule 74 counsel to

1 Witness P-10; decides that the start of the testimony of Witness P-11 is postponed to
2 Wednesday, 8 March 2017 at 14.30 hours with a view to allowing new counsel to
3 familiarise himself or herself with the proceedings.

4 And I would also add that on Wednesday afternoon we have only one hour, from
5 14.30 to 15.30, and therefore we will use this hour for all the preliminaries and for the
6 decisions on the application of the Regulation 35 applications and all what will up
7 come, which we don't know now, so that on Wednesday morning we start with
8 giving the floor to the Office of the Prosecutor.

9 And I also add that the Chamber would very much urge the Prosecutor to try to
10 conclude his questioning by Friday. If we go on Monday, we can, but not very far.
11 So just for you to know so we have enough time also for the Defence teams for next
12 week.

13 Orders that the following documents, that following documents to be reclassified as
14 confidential, ICC-02/11-01/11-372-Conf-Exp and its annexes and 378-Conf-Exp;

15 Orders the parties to make their responses to the Prosecution's request under Rule 35,
16 which were due this afternoon in writing by tomorrow noon.

17 This concludes the Chamber's oral ruling. And the hearing is adjourned to
18 Wednesday, 8 March 2017 at 14.30 hours as said.

19 Thank you very much. The hearing is adjourned.

20 THE COURT USHER: [11:41:35] All rise.

21 (Recess taken at 11.41 a.m.)

22 RECLASSIFICATION REPORT

23 Pursuant to the Trial Chamber I 'email instructions dated 14 March 2017, the excerpt
24 of the transcript starting on page 14 line 15 and ending line 19 is reclassified
25 confidential.