

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15

Date: 7 May 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

Public

Order setting the commencement date for trial

Order to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

Legal Representatives of Victims

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I ('Chamber')¹ of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* ('Gbagbo and Blé Goudé case'), having regard to Article 64 of the Rome Statute ('Statute'), and Rule 132 of the Rules of Procedure and Evidence ('Rules'), issues the following 'Order setting the commencement date for trial'.

I. Procedural History

1. On 4 November 2014, the Chamber held its first status conference in the case of *The Prosecutor v. Laurent Gbagbo* ('Gbagbo case'),² prior to and during which it received submissions of the parties and participants on the timing of disclosure of evidence in preparation for trial and proposals for the commencement date of the trial, as well as other related issues.
2. On 17 November 2014, the Chamber in the *Gbagbo* case issued the 'Order setting the commencement date for the trial and the time limit for disclosure', directing, *inter alia*, the Office of the Prosecutor ('Prosecution') to disclose to the defence team for Mr Gbagbo ('Gbagbo Defence') 'all Rule 76 and Rule 77 material on a rolling basis, [...] all Article 67(2) material as soon as practicable, and in any event to provide full disclosure of all material to the Gbagbo Defence no later than 6 February 2015'.³
3. On 11 December 2014, Pre-Trial Chamber I confirmed the charges against Mr Blé Goudé ('Blé Goudé Confirmation Decision').⁴ On 20 December 2014, the

¹ Where 'Chamber' is used in this decision it refers to both Trial Chamber I as composed by the Presidency's 'Decision replacing a judge in Trial Chamber I', 18 March 2015, ICC-02/11-01/15-8-AnxI, and to the chamber in its previous composition.

² Transcript of hearing dated 4 November 2014, ICC-02/11-01/11-T-25-CONF-ENG CT.

³ ICC-02/11-01/11-723, para. 10.

⁴ Pre-Trial Chamber I, Decision on the confirmation of charges against Charles Blé Goudé, 11 December 2014, ICC-02/11-02/11-186. *See also* Partly Dissenting Opinion of Judge Christine Van den Wyngaert, ICC-02/11-02/11-186-Anx.

Presidency referred the case of *The Prosecutor v. Charles Blé Goudé* ('Blé Goudé case') to the Chamber.⁵

4. On 13 February 2015, a status conference was convened in the *Blé Goudé* case, prior to and during which the parties and participants made submissions on, *inter alia*, the status of disclosure and proposals for a starting date for the trial.⁶
5. On 11 March 2015, the Chamber granted the Prosecution's requests to join the *Gbagbo* and the *Blé Goudé* cases ('Decision on Joinder').⁷ In the same decision, the Chamber scheduled a status conference for 21 April 2015 and directed the parties and participants to submit written observations on the items listed in the provisional agenda, annexed to the decision, including the timing of disclosure and proposals for the commencement date of the joint trial, the need for any auxiliary documents related to the charges, and the possibility to reach agreements on facts pursuant to Rule 69 of the Rules.⁸
6. Having received written submissions from the Prosecution, the Defence, the Legal Representative of victims ('LRV'), and the Registry on these issues on 14 April 2015,⁹ the Chamber held its first status conference in the joint case on 21 April 2015.¹⁰

⁵ Corrigendum to the "Decision referring the case of *The Prosecutor v. Charles Blé Goudé* to Trial Chamber I", ICC-02/11-02/11-193, 20 December 2014 (registered on 22 December 2014), 20 December 2014, ICC-02/11-02/11-193-Corr.

⁶ ICC-02/11-02/11-T-9-Red-ENG ET, 13 February 2015. *See also*, Urgent Defence submissions on the need to have adequate time and facilities to prepare for trial and extension of time to respond to joinder request, 26 January 2015, ICC-02/11-02/11-201, with confidential annexes 1-4.

⁷ Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters, with public Annex A, 11 March 2015, ICC-02/11-01/15-1. *See also* ICC-02/11-01/11-810 and ICC-02/11-02/11-222.

⁸ Provisional agenda for the status conference, ICC-02/11-01/15-1-AnxA.

⁹ Prosecution's submission on the provisional agenda for the 21 April status conference, 14 April 2015, ICC-02/11-01/15-35-Conf (A public redacted version was filed on 15 April 2015: ICC-02/11-01/15-35-Red) ('Prosecution Submissions') with Confidential Annex; *Soumissions de la Défense concernant l'ordre du jour de la conférence de mise en état prévue le 21 avril 2015*, 14 April 2015, ICC-02/11-01/15-32-Conf with Public Annex (A public redacted version was filed on the same day: ICC-02/11-01/15-32-Red) ('Gbagbo Defence Submissions'); Defence Submissions on Agenda Items for the Status Conference of 21 April 2015, 14 April 2015, ICC-02/11-01/15-33 ('Blé Goudé Defence Submissions') with Public Annex; Submissions on the Provisional Agenda for the Status Conference to be held on 21 April 2015, 14 April 2015, ICC-02/11-01/15-36 ('LRV Submissions'); Registry's Observations following the "Decision on Prosecution requests to join the cases

7. The Chamber considers that the parties' current submissions supersede any earlier requests made prior to the Decision on Joinder.

II. Submissions

a) Prosecution

8. The Prosecution indicates that it has disclosed to both Defence teams the statements and interview transcripts of almost the totality of the witnesses and other evidence it intends to rely on at trial.¹¹ The Prosecution further informed the Chamber that while its investigations are completed, it is currently conducting 'additional forensic investigative steps' to consolidate its case, including conducting interviews with two additional witnesses. The Prosecution indicates that disclosure of the remaining material should be completed in June 2015.¹² It submits that October 2015 would be a realistic date to start trial. However, for different reasons, including the potential impact of the presidential elections scheduled to be held in Côte d'Ivoire at the end of October 2015, and the forthcoming move of the Court to new premises by the end of the year, the Prosecution proposes that the trial commencement date be set for January 2016.¹³
9. Furthermore, the Prosecution considers that the Gbagbo Decision on the confirmation of charges ('Gbagbo Confirmation Decision')¹⁴ and the Blé Goudé Confirmation Decision (together 'Confirmation Decisions') are sufficiently clear and that no auxiliary document is therefore necessary in this case. It stands however ready to submit a common and updated document containing the charges ('DCC'), or alternatively a pre-trial brief, including the factual allegations

of *The Prosecutor v. Laurent Gbagbo and The Prosecutor v. Charles Blé Goudé and related matters*", 14 April 2015, ICC-02/11-01/15-37.

¹⁰ Transcript of hearing dated 21 April 2015, ICC-02/11-01/15-T-1-CONF-ENG ET.

¹¹ Prosecution Submissions, ICC-02/11-01/15-35-Red, para. 3. The Chamber notes that the Prosecution submitted a provisional list of witnesses (ICC-02/11-01/15-35-Conf-AnxA).

¹² Prosecution Submissions, ICC-02/11-01/15-35-Red, para. 44; ICC-02/11-01/15-T-1-CONF-ENG ET, page 41.

¹³ Prosecution Submissions, ICC-02/11-01/15-35-Red, para. 44; ICC-02/11-01/15-T-1-CONF-ENG ET, pages 86-89.

¹⁴ Pre-Trial Chamber I, Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-01/11-656-Conf (public redacted version at ICC-02/11-01/11-656-Red). *See also* Dissenting Opinion of Judge Christine Van den Wyngaert, ICC-02/11-01/11-656-Anx.

sourced to the evidence relied upon, as well as a single consolidated document reproducing the charges as confirmed by Pre-Trial Chamber I in both cases.¹⁵

b) Defence

10. Both Defence teams stress that the date of trial is dependent on the date full disclosure by the Prosecution will be completed. In particular, in its written submissions the Gbagbo Defence argues that it will be able to indicate the time needed to prepare only once it is in possession of: (i) the entirety of the Prosecution's evidence;¹⁶ (ii) an amended DCC;¹⁷ (iii) a pre-trial brief;¹⁸ and (iv) a final list of witnesses the Prosecution intends to rely on at trial, with indications of the order in which they will be called to testify.¹⁹ Additionally, the Defence requests that the Prosecution files an 'In-depth Analysis Chart' ('IDAC') and an element-based chart which identifies the relevant documents intended to be used to prove each legal element ('EBC').²⁰ During the status conference, the Gbagbo Defence submitted that the trial should commence in April 2016.²¹
11. The Blé Goudé Defence requests that in setting the date for trial the Chamber should consider, *inter alia*, the complexity of the case, the time needed to study the *Gbagbo* case, to review the material disclosed and to prepare for the cross-examination of the witnesses the Prosecution intends to call to testify, also in light of the resources available. It therefore requests a minimum of 12 months, starting from the status conference on 21 April 2015, before the trial commences.

¹⁵ Prosecution Submissions, ICC-02/11-01/15-35-Red, paras 25-42; ICC-02/11-01/15-T-1-CONF-ENG ET, pages 58-68.

¹⁶ Gbagbo Defence Submissions, ICC-02/11-01/15-32-Red, paras 3-4 and 11-16; ICC-02/11-01/15-T-1-CONF-ENG, page 17-19. The Gbagbo Defence requests that the material collected after the 6 February 2015 deadline relating to the case against Mr Gbagbo be set aside, pursuant to the Chamber's order of 13 February 2015 (ICC-02/11-01/15-T-1-CONF-ENG ET, page 19).

¹⁷ Gbagbo Defence Submissions, ICC-02/11-01/15-32-Red, paras 62-65; ICC-02/11-01/15-T-1-CONF-ENG ET, pages 70-73.

¹⁸ Gbagbo Defence Submissions, ICC-02/11-01/15-32-Red, paras 66-71 ; ICC-02/11-01/15-T-1-CONF-ENG ET, page 74.

¹⁹ Gbagbo Defence Submissions, ICC-02/11-01/15-32-Red, paras 72-73; ICC-02/11-01/15-T-1-CONF-ENG ET, pages 50-51.

²⁰ ICC-02/11-01/15-T-1-CONF-ENG ET, pages 75-77. *See also*, Gbagbo Defence Submissions, ICC-02/11-01/15-32-Red, para. 42.

²¹ ICC-02/11-01/15-T-1-CONF-ENG ET, pages 89-92.

It also indicates that it requires a minimum of five months between the last disclosure and the commencement of trial to prepare for trial.²² During the status conference, the Blé Goudé Defence indicated January 2016 as the earliest date it could be ready to start.²³

12. In the context of submissions on the need for any auxiliary documents, the Blé Goudé Defence averred that accused are not presently properly put on notice to mount an effective defence. The Blé Goudé Defence raises its concerns as regards the additional evidence obtained by the Prosecution after the confirmation of charges, as well as the relevant facts in the case that are specific to one or the other accused. It also submits that should an EBC be filed, the Prosecution should specify in a more detailed manner the relevant portions of each document in relation to the alleged crime or mode of liability.²⁴

c) LRV

13. The LRV requests that the trial proceedings commence as soon as possible, and proposes that the trial could start in October 2015 with the opening statements, resuming later in January 2015.²⁵

III. Analysis

14. At the outset, the Chamber notes its obligation under Article 64(2) and (3) of the Statute to ensure the fairness and expeditiousness of the trial. In particular, under Article 64(3)(a) of the Statute, the Trial Chamber assigned to deal with the case shall '[c]onfer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings'.

²² Blé Goudé Defence Submissions, ICC-02/11-01/15-33, paras 6-34 (referring to ICC-02/11-02/11-201 at para. 6). *See also*, Annex to the Blé Goudé Defence Submissions (referring to ICC-02/11-02/11-220).

²³ ICC-02/11-01/15-T-1-CONF-ENG ET, pages 92-93.

²⁴ ICC-02/11-01/15-T-1-CONF-ENG ET, pages 78-80.

²⁵ LRV Submissions, ICC-02/11-01/15-36, paras 36-37; ICC-02/11-01/15-T-1-CONF-ENG ET, page 94.

15. In reaching its decision, the Chamber has taken into account the Prosecution's undertaking that it has already disclosed the vast majority of the evidence to the Defence teams, and that any limited material remaining to be disclosed, will be transmitted on a rolling basis and no later than the end of June 2015. The Chamber has also taken into account the Defence arguments, in particular those concerning the time needed for preparation, in light of the complexity of the case, the volume of the material disclosed, the joinder of the two cases, and available resources. The Chamber has also considered the Court's relocation to new premises.
16. In light of the submissions made by the parties and participants and of its duty to ensure a fair and expeditious trial, the Chamber sets the trial commencement date for 10 November 2015, in order to hear the opening statements of the parties and participants. Thereafter, the Prosecution will start its presentation of evidence in January 2016, at a date to be confirmed. As directed below, disclosure by the Prosecution should be completed by 30 June 2015. The Chamber notes that, as a result, the Defence will have more than four months between the date of full disclosure by the Prosecution and the opening statements. Thereafter, it will have two additional months before the commencement of the presentation of evidence, which the Chamber considers will afford the Defence sufficient time to carry out all necessary preparations.
17. As for the requests seeking the filing of additional documents prior to the commencement of trial, the Chamber recalls that the decision on the confirmation of the charges defines the parameters at trial.²⁶ Consequently, the Chamber considers that an updated DCC is not necessary for the accused to prepare an effective defence pursuant to Article 67 of the Statute. However, this does not

²⁶ See Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red (A5), para. 124. See also ICC-02/11-01/11-T-25- CONF, ICC-02/11-01/11-T-25-CONF-ENG CT, pages 54-55.

preclude the filing, by the Prosecution, of other auxiliary documents with a view of providing the Defence with further details in relation to the charges confirmed.

18. With regard to the Defence's submission that following the joinder it is unclear what charges are presented against one or the other accused, the Chamber considers that the facts and circumstances described in the charges against either accused have not changed and have been clearly established by the Pre-Trial Chamber in the respective Confirmation Decisions. The Chamber already emphasised in the Decision on Joinder that pursuant to Article 74(2) of the Statute, the final decision on the guilt or innocence of Mr Gbagbo and Mr Blé Goudé shall not exceed the facts and circumstances described in the charges confirmed by the Pre-Trial Chamber in the respective Confirmation Decisions.²⁷ The Chamber notes the Defence's argument that the evidence to be relied on at trial by the Prosecution may be different from the evidence used for the purpose of the confirmation of the charges hearing. However, the Chamber stresses that regardless of whether the evidence to be relied on at trial by the Prosecution was used at the pre-trial stage, the facts and circumstances underlying the charges against the accused remain unchanged, as outlined in the two Confirmation Decisions.

19. Notwithstanding the above, the Chamber notes the Prosecution's submission that it is ready to file a pre-trial brief in order to provide the Defence with an explanation of the Prosecution's case. The Chamber is of the view that such a document could facilitate the fair and expeditious conduct of the trial proceedings, as it is a summary of the evidence to be relied on by the Prosecution, based on the charges as confirmed by the Pre-Trial Chamber. In light of the joinder and the two Confirmation Decisions, such a document explaining the Prosecution's case theory with reference to the witnesses the Prosecution intends

²⁷ Decision on Joinder, ICC-02/11-01/15-1, para. 57.

to call and the evidence it intends to rely on at trial would be beneficial to the Defence in preparation for trial.

20. With regard to other auxiliary documents sought by the Defence, namely the EBC and IDAC the Chamber considers that a pre-trial brief is sufficient in the present circumstances.

Schedule leading up to trial

21. In light of the above, and pursuant to Article 64(2) of the Statute, the Chamber issues the following schedule leading up to trial.
22. **Completion of disclosure by the Prosecution.** The Prosecution is directed to disclose all incriminatory material in the form of witness statements and any other material to be relied on at trial, as well as all Article 67(2) and Rule 77 material in its possession for inspection to the two Defence teams on a rolling basis and no later than **30 June 2015**. Disclosure of the reports of any expert witness who will be called during the Prosecution case should be completed by the same date.
23. Any request for delayed disclosure of Prosecution witness' identities and for non-standard redactions should be filed by **2 June 2015**.
24. The Chamber clarifies that any forthcoming disclosure should be effectuated in accordance with the eCourt Protocol, as adopted in the *Blé Goudé case*.²⁸
25. **List of witnesses and list of evidence to be relied on at trial.** The Prosecution is directed to file a list of evidence to be relied on at trial, as well as a list of witnesses, no later than **30 June 2015**. The list of witnesses should include a summary of the main facts on which each witness is expected to testify, an indication of the estimated length of time required for each witness and the total

²⁸ Unified Technical protocol ("E-court Protocol") for the provision of evidence, witness and victims information in electronic form, ICC-02/11-02/11-59-Anx. See also, ICC-02/11-01/15-T-1-CONF-ENG ET, pages 82-83.

time for the presentation of the Prosecution case, in hours. In order to further facilitate the Defence preparation for trial, the Prosecution is directed to provide a list indicating, in order, at least the first 20 witnesses it intends to call ('First list'), by **15 October 2015**.

26. **Auxiliary documents.** The invited document, namely the 'pre-trial brief', should contain, as proposed by the Prosecution, for each count, a summary of the relevant evidence to be relied on, explaining how the evidence relates to the charges, as confirmed by the Pre-Trial Chamber, and as described in paragraph 19 of this decision. The pre-trial brief should be filed by the Prosecution by **16 July 2015**.

27. **Agreed facts.** The parties should liaise with a view to reaching agreements about non-contentious issues.²⁹ A joint report on the progress made in this respect, should be filed by **1 September 2015**. The LRV may make observations thereon by **15 September 2015**.

28. **Motions prior to the commencement of trial.** In order to ensure a fair and expeditious trial and enable issues to be addressed in a timely and efficient manner, the Chamber considers it appropriate to set a deadline for the filing of all motions that, in the view of the parties and participants, require resolution prior to the commencement of trial and which are not already before the Chamber.³⁰ Any such motion should be filed by **1 October 2015**.

²⁹ ICC-02/11-01/15-T-1-CONF-ENG ET, pages 37-41. As mentioned during the status conference, discussion as to agreed facts is an ongoing process. "Although the Chamber may set a deadline for the submission of proposals, it does not in any way prevent the parties from submitting any additional agreements that they may have and that they may be able to reach at a later stage". ICC-02/11-01/15-T-1-CONF-ENG ET, page 38.

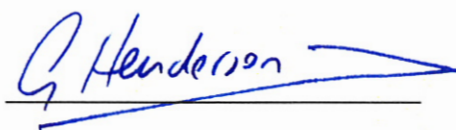
³⁰ See Rule 134 of the Rules.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

SETS the commencement date for the trial on 10 November 2015; and

ADOPTS the schedule leading up to trial as set out in paragraphs 21 to 28 above.

Done in both English and French, the English version being authoritative.



Judge Geoffrey Henderson, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Bertram Schmitt

Dated 7 May 2015

At The Hague, The Netherlands