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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 Document
With public Annex 1**

Defence Submissions on Agenda Items for the Status Conference of 21 April 2015

Source: Defence of Mr Charles Blé Goudé

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

The Office of the Prosecutor
 Ms Fatou Bensouda, Prosecutor
 Mr James Stewart
 Mr Eric MacDonald

Counsel for Blé Goudé
 Mr Geert-Jan Alexander Knoops
 Mr Claver N'dry

Counsel for Laurent Gbagbo
 Mr Emmanuel Altit
 Ms Agathe Bahi Baroan

Legal Representatives of the Victims
 Ms Paolina Massidda

The Office of Public Counsel for Victims
 Ms Paolina Massidda
 Mr Enrique Carnero Rojo

States' Representatives

REGISTRY

Registrar
 Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
 Section**

Introduction

1. In light of the Decision of Trial Chamber I (“the Chamber”), dated 11 March 2015, to Convene a Status Conference on 21 April 2015 in the case of the *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, the Defence of Charles Blé Goudé (“the Defence”) hereby makes submissions in relation to items (a), (f) and (i) on the status conference agenda:

- Commencement date of the trial.
- Timing, volume and modalities of disclosure of evidence pursuant to Rule 76 of the Rules.
- Conduct of proceedings

I. Procedural History

2. On 26 January 2015, the Defence filed the “Urgent Defence submissions on the need to have adequate time and facilities to prepare for trial and extension of time” (“motion for time and facilities”).¹
3. On 11 February 2015, the Chamber ordered that the issue of time and facilities for the Defence to prepare for trial should form part of the agenda of the status conference to be held on 13 February 2015.²
4. On 6 March 2015, the Defence filed a motion on the “Notification on *status quo* of Defence access to the software programs of the International Criminal Court.”³
5. On 11 March 2015, the Chamber issued a decision joining the cases against Laurent Gbagbo and Charles Blé Goudé (“the Joinder decision”).⁴ In this decision, the Chamber informed the parties and participants of a status conference to be held on 21 April 2015 in the joint case.

¹ ICC-02/11-02/11-201.

² ICC-02/11-02/11-214.

³ CC-02/11-02/11-220.

⁴ ICC-02/11-02/11-222.

6. On 16 March 2015, the Defence filed a request for leave to appeal the “decision on prosecution requests to join the cases of *the Prosecutor v. Laurent Gbagbo* and *the Prosecutor v. Charles Blé Goudé* and related matters”.⁵

II. Submissions

A. Commencement of trial

7. The Defence refers the Chamber to its motion for adequate time and facilities of 26 January 2015, where it made extensive submissions regarding the fundamental right of an accused person under the Rome Statute (“the Statute”), as well as under customary law and the supporting case law, to have adequate time and facilities to prepare for trial.⁶
8. In the motion for adequate time and facilities, the Defence requested for a period of 15-18 months starting from January 2015 to enable it to adequately prepare for trial. The current submissions are made to provide the Chamber with the status quo of the Defence’s preparation for trial. As will be shown below, counting from the 21 April 2015, the Defence respectfully maintains that it needs at a minimum 12 months to adequately prepare for trial. This is especially true in light of three additional factors which emerged after the Status Conference of 13 February 2015: the effect of the joinder, disclosures of evidence made by the Office of the Prosecutor (“the OTP” or “the Prosecution”), the trainings for the new Defence team and the number of prosecution witnesses in the case.

(i). The joinder decision has the effect of significantly increasing the workload with which the Defence is faced

9. One of the orders of the Chamber in the joinder decision was to request the Registry to merge the records in the *Gbagbo* and *Blé Goudé* cases. As submitted in the Defence motion of the 26 January 2015, the two cases joined by this decision are voluminous

⁵ ICC-02/11-01/15-5.

⁶ ICC-02/11-02/11-201 para. 19-22.

and complex.⁷ At the time of the joinder, the *Gbagbo* case was had been on-going for three years, containing over 871 filings consisting of numerous annexes.

10. In its response to the joinder request, the Gbagbo Defence team stated as follows:

“Il est utile de rappeler que ce dossier est le plus important et le plus complexe qu’aura eu à juger jusque-là la CPI, notamment du fait des enjeux, de l’identité et du nombre des protagonistes de la crise postélectorale et du fait qu’il s’agit de l’affaire qui aura compté le plus d’échanges à ce stade : 624 écritures soit 25 407 pages ont été échangés entre les parties donnant lieu à 247 décisions, soit 3 249 pages. Le Procureur a déposé trois différents Documents Contenant les Charges (DCC).”⁸

11. The above excerpt indicates that the Blé Goudé Defence team faces – in view of the joinder – the obligation to read and analyse over 28 656 pages of documents from the *Gbagbo* case.

12. If the Defence were to dedicate 4 members of its team to deal exclusively with this task, reading at the rate of 50 pages per day⁹, the Defence would need at least 144 working days to finish this workload. This is equivalent to 28 weeks, which is 7 months.

Total number of pages	Number of days	Number of weeks	Number of months
28 656	144 working days	28	7

13. The Defence submits that as a result of the Joinder decision the Defence is required to review all the filings in the *Gbagbo* case as they directly affect the case against Mr. Blé Goudé. This review process alone will take up to 7 months as shown above.

⁷ *Ibid.*, para 29.

⁸ ICC-02/11-01/11-765.

⁹ The OTP has assumed itself that reading 50 pages a day is realistic, see ICC-02/04-01/15-196-Red2.

(ii). Quantity of evidence disclosed to the *Blé Goudé* Defence by the OTP

14. In addition to section (i) above, the new Defence team has an obligation to review evidence disclosed by the OTP on an ongoing basis:

- a) On the 19 February 2015, the OTP disclosed to the Defence of Charles Blé Goudé, 767 items of incriminating evidence, 15 items of potentially exculpatory evidence and 519 items pursuant to Rule 77 of the Rules of Procedure and Evidence (Rules).¹⁰
- b) On 2 March 2015, the OTP disclosed to the Defence a package containing 44 items of incriminating evidence and 60 items pursuant to Rule 77 of the Rules.¹¹
- c) On 10 March 2015, the OTP disclosed 114 items of incriminating evidence, 10 items of potentially exculpatory evidence and 47 items pursuant to rule 77 of the Rules.¹²
- d) On 23 March 2015, the OTP disclosed evidence to the Defence 82 items of incriminating evidence and Rule 77 package containing 7 items.¹³
- e) On 31 March 2015, the OTP disclosed Pre-Trial INCRIM Package 3, Pre-Trial INCRIM Package 2, and Pre-Trial Rule 77 Package 3, containing 4, 54, and 4 items respectively.

15. Being that the Defence team is newly constituted,¹⁴ it has the obligation to analyse not only the above listed disclosures made from February to April 2015 but also the disclosures made during the pre-confirmation period. Added together, the total number of items of evidence that has been disclosed to the Blé Goudé Defence from the

¹⁰ ICC-02/11-02/11-218.

¹¹ ICC-02/11-02/11-219.

¹² ICC-02/11-02/11-221.

¹³ ICC-02/11-01/15-12.

¹⁴ See ICC-02/11-02/11-201 para 24-28

commencement of the case is 8181 items of evidence of which 911 are videos. This constitutes a total of 49 384 pages according to Ringtail calculations.¹⁵

16. In the *Ongwen* case, the OTP stated that “disclosure review is a slow and labour-intensive exercise. From experience in previous cases, the average time required to review documents [...] is 50 pages per person per day” (emphasis added).¹⁶

17. Based upon this calculation, 4 members of the Defence team exclusively reviewing this evidence 8 hours in a day, requires a period of 50 weeks to review all the documents currently disclosed.

18. The videos are approximately one hour long each, thereby equalling 911 hours. Four persons exclusively analysing the videos for 8 hours every day would need about 29 days to go through all the videos, which translates to about one and a half months (of working days). Below is a table showing these figures.

		Total hours required	Approximate time in weeks	Approximate time in months
Number of videos	911	911	5.7	1.5
Page count of documents	49 384	7 901.44	50	12.5
Total			55.7	14

19. The Defence draws the attention of the Chamber to the initial Defence motion where the Defence demonstrated that the Counsel and Co-counsel were able to access Ringtail in January 2015 while the rest of the team members were given the codes for Ringtail in February-March 2015.¹⁷ In this regard, the Defence estimates that it will

¹⁵ These calculations exclude the disclosures made by the OTP to the Defence on the 31 March 2015 and 13 April 2015.

¹⁶ ICC-02/04-01/15-196-Red2.

¹⁷ ICC-02/11-02/11-201 para 24-28.

require at least a total of 11 more months to review the evidence as currently disclosed by the OTP.

(iii). Technical problems which impede the team's progress

20. The Defence reiterates its submissions put forward in the “Notification on *status quo* of Defence access to the software programs of the International Criminal Court” where the Defence notified the Chamber of the scheduling of the training for mid-March of this year.¹⁸

21. Indeed, the Defence team members received Citrix training on 9 March 2015, E-court and Ringtail training on 12 March 2015 and another Citrix training on 26 March 2015. These trainings being conducted in March 2015 imply that the Defence was only able to effectively commence with its preparation of the case. This is illustrated by Annex 1 of this submission.¹⁹

22. Besides, the Defence team has been faced by myriad technical problems which have impeded the effective preparation of its case and particularly of the potential trial. This is illustrated in Annex 1 of this submission. In sum, all these issues have constituted a serious delay in the Defence preparation of its case and the potential trial. In fact, due to these issues, the new Defence team - as submitted at the Status Conference in February 2015 - could only have effectively started with the substance of the case at the end of March 2015

B. Timing, volume and modalities of disclosure of evidence

23. The Defence requests a period of five months between the last OTP disclosure and the commencement of trial in addition to the mentioned time it needs to study the *Gbagbo* case and review the present disclosures.

24. Rule 76 of the Rules provides that:

¹⁸ ICC-02/11-02/11-220 para 2.

¹⁹ See annex 1.

“The Prosecutor shall provide the Defence with the names of witnesses whom the prosecutor intends to call to testify and copies of any prior statements made by those witnesses. This shall be done sufficiently in advance to enable the adequate preparation of the Defence.” (emphasis added)

25. During the Status Conference held on 13 February 2015, Mr. Macdonald stated that he was not yet certain of the number of witnesses that would testify in the case against Mr. Blé Goudé. Yet, the Prosecutor indicated that the number could be 101, similar to the witnesses in the Gbagbo case, being an approximate figure and suggested that it was likely to increase.²⁰

26. This number of witnesses will undoubtedly be larger than the usual number of witnesses often relied on by the OTP in other trials which often ranges from 30 to 40 witnesses.²¹

27. The Defence submits that since it seems common to allow the Defence a period of 3 months after disclosure to prepare for trial, and this often relates to cases whereby the number of witnesses is far less, the Defence would require up to three times this time frame to prepare for the cross-examination of more than 101 witnesses.

28. It is thus fair to estimate that the Defence will require a minimum of 5 months of investigation to do background checks, verify witness statements and effectively prepare to cross examine more than 101 witnesses. This period seems in accordance with the time frame the Chamber accepted in the *Gbagbo* case as to the time between the last OTP disclosure and the start of the trial.

29. In the *Gbagbo* case the Chamber held that:

“The Chamber is mindful of its obligations under the Statute to ensure that the accused is tried without undue delay and that the trial is fair and expeditious. However, a balance must be struck between this obligation and the Chamber's

²⁰ ICC-02/11-02/11-T-9-CONF-ENG page 37.

²¹ *Ibid.*, during the Status Conference on 13 February 2015 Judge Henderson said that 101 number of witnesses as a ballpark figure was unusually large.

duty to ensure the accused has adequate time and facilities for the preparation of his Defence.”²²

30. Based on this argument, the Chamber held that the trial would commence on 7 July 2015 from the last day of disclosure which was set at 6 February 2015.²³ This gave the *Gbagbo* Defence an allowance of 5 months between the end of disclosure and beginning of trial.

31. The *Blé Goudé* Defence team requests that the Chamber adopts the same calculation in allocating time to prepare for trial after the last disclosure.

Summary

32. The table below gives a summary of the total amount of time required by the Defence to prepare from trial as illustrated in the above sections.

Activity	Time required
Review of filings Gbagbo	7 months
Analysis of evidence disclosed by the OTP	14 months
Time between last disclosure and commencement of trial	5 months
Total	26 months

33. However, conscious of the right of an accused person to be tried without undue delay, the calculated 26 months to prepare for trial should be balanced also against other interests, the outcome of which could lead to, at a minimum, 12 months (counting from 21 April 2015) before the trial commences.

Conclusion on commencement of trial

34. For the reasons set out above, the Defence submits it is reasonable that the Trial against Mr. Blé Goudé ought not to commence within 12 months (counting from 21

²² ICC-02/11-01/11-723 para 9.

²³ *Ibid.*

April 2015).

C. Conduct of proceedings

35. The Defence respectfully requests the Chamber to provide an indication as to when it anticipates to issue a decision on the outstanding protocols for which the Chamber ordered the Defence to make submissions.²⁴ These protocols include: firstly, the protocol on handling confidential information, and the protocol on dual status witnesses on which the Defence of Blé Goudé filed its submissions on 9 April 2015,²⁵ and secondly, the witness preparation protocol, the protocol on vulnerable witnesses and the witness familiarization protocol for which the Defence will file submissions on the 30th April. This indication will be helpful for the Defence to plan the start of its own investigations.



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

Respectfully submitted on the 14th day of April 2015

At The Hague, The Netherlands

²⁴ ICC-02/11-01/15-7.

²⁵ ICC-02/11-01/15-26-Conf and ICC-02/11-01/15-27-Conf.