

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 January 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Cuno Tarfusser
Judge Olga Herrera Carbuccion

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

Public

Decision on the 'Prosecution's Request for Partial Suspension of the "Order setting the commencement date for the trial and the time limit for disclosure"'

Decision 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

Counsel for Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Legal Representatives of Victims

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') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo* ('Gbagbo case'), having regard to Articles 64(3) and 67(1) of the Rome Statute and Regulation 35 of the Regulations of the Court ('Regulations'), issues the following 'Decision on the Prosecution's Request for Partial Suspension of the "Order setting the commencement date for the trial and the time limit for disclosure"'.

I. Procedural history

1. On 17 November 2014, the Chamber set the date for commencement of trial for 7 July 2015 and set the time limit for the Office of the Prosecutor ('Prosecution') to disclose all material to the Defence team for Mr Gbagbo ('Defence') no later than 6 February 2015. The Chamber also directed that, by the same date, the Prosecution provides its list of witnesses and list of evidence to be relied on at trial ('Order').¹
2. On 11 December 2014, Pre-Trial Chamber I confirmed the charges against Mr Charles Blé Goudé ('Blé Goudé Confirmation Decision').²
3. On 16 December 2014, the Prosecution filed its request to join the present case with the case of *The Prosecutor v. Charles Blé Goudé* ('Blé Goudé case'), ('Joinder Request').³
4. On 19 December 2014, the Prosecution filed a request for partial suspension of the 6 February 2015 deadline set in the Order pending the Chamber's decision on the Joinder Request ('Suspension Request').⁴

¹ Order setting the commencement date for the trial and the time limit for disclosure, 17 November 2014, ICC-02/11-01/11-723.

² Pre-trial Chamber I, Decision on the confirmation of charges against Charles Blé Goudé, 11 December 2014, ICC-02/11-02/11-186.

³ Request to join the cases of the Prosecutor v. Laurent Gbagbo and the Prosecutor v. Charles Blé Goudé, 16 December 2014, ICC-02/11-01/11-738.

⁴ Prosecution's Request for Partial Suspension of the "Order setting the commencement date for the trial and the time limit for disclosure", 19 December 2014, ICC-02/11-01/11-741.

5. On 6 January 2015, the Single Judge, upon the request of the Defence, ordered that any response to the Joinder Request be filed within 21 days of notification of its French translation, as well as the translation of the *Blé Goudé* Confirmation Decision.⁵
6. On 9 January 2015 the Defence filed its response to the Suspension Request ('Response').⁶

II. Submissions

7. The Prosecution submits that it will disclose to the Defence all material currently in its possession by 6 February 2015. However, it requests the suspension of the aforesaid deadline in respect of material they may obtain in the course of current investigations in the *Blé Goudé* case.⁷
8. The Prosecution submits this is warranted since: (a) the Prosecution would then be able to rely on the same body of evidence for both accused; (b) inconsistency in the evidentiary record in the two cases could lead to inconsistent findings of the Chamber that could delay proceedings; and (c) coordinated deadline would avoid the Prosecution having to file requests pursuant to Regulation 35 of the Regulations.⁸
9. Moreover, the Prosecution argues that the suspension would not prejudice Mr Gbagbo, since the Defence would still receive all material in the Prosecution's possession by 6 February 2015, and any additional material

⁵ Decision on the Defence challenge to the Chamber's competence to hear the Prosecution's Joinder Request and on its request for a variation of the response deadline, ICC-02/11-01/11-744.

⁶ Réponse de la Défense à la « Prosecution's Request for Partial Suspension of the "Order setting the commencement date of the trial and the time limit for disclosure" » (ICC-02/11-01/11-741), 9 January 2015, ICC-02/11-01/11-745. The Chamber shortened the deadline for responses to 9 January 2015. See e-mail from Trial Chamber I Gbagbo Communications to counsel on 6 January 2015 at 15:41.

⁷ Suspension Request, ICC-02/11-01/11-741, para. 13.

⁸ Suspension Request, ICC-02/11-01/11-741, para. 12.

would be limited and is likely to merely corroborate other evidence already disclosed.⁹

10. The Defence submits that the Suspension Request should be rejected in its entirety. As a preliminary remark, the Defence recalls that the Chamber set the deadlines balancing the need for an expeditious trial with the rights of the accused.¹⁰ In its view, granting the Suspension Request, without modifying the trial date, would reduce the time allocated to the Defence for the purpose of trial preparation and question the balance struck by the Chamber.¹¹ In addition, the Defence argues that the relief sought by the Prosecution would cause a slow-down in the proceedings and infringe fairness principles.¹² In the view of the Defence, the Prosecution is making the Suspension Request in order to benefit from additional time to investigate and to disclose material to the Defence.¹³ The Defence also considers that the Suspension Request is based on a wrong premise, that is on the fact that the Joinder Request will be granted.¹⁴

11. The Defence is of the view that, in any event, it will require five months after full disclosure for the preparation of Mr Gbagbo's defence. In this regard, it stresses the complexity of the case and claims that its investigations can only be conducted meaningfully after completion of Prosecution's disclosure.¹⁵

12. Hence, in the alternative and if the Chamber decides to grant the Suspension Request, the Defence submits that the Chamber should also: i) find that the Defence has the right to benefit from five months between full disclosure of the Prosecution's evidence and the start of trial; ii) decide that all dates set by

⁹ Suspension Request, ICC-02/11-01/11-741, para. 13.

¹⁰ Response, ICC-02/11-01/11-745, para. 13.

¹¹ Response, ICC-02/11-01/11-745, paras 13 and 17-20.

¹² Response, ICC-02/11-01/11-745, para. 13.

¹³ Response, ICC-02/11-01/11-745, para. 22.

¹⁴ Response, ICC-02/11-01/11-745, paras 42-44.

¹⁵ Response, ICC-02/11-01/11-745, paras 23-41.

the Chamber's Order of 17 November 2014 are void (including the trial date); and iii) state that new dates (including a new trial date) will be set in due course.¹⁶

III. Analysis

13. The Chamber notes that in the Order, setting the trial date and deadline for disclosure, it determined that it was neither appropriate nor necessary to consider submissions on the impact of a possible joinder of this case with the *Blé Goudé* Case, as the *Blé Goudé* Confirmation Decision was still pending at that moment.¹⁷ However, at the time the present Suspension Request was made, charges in the *Blé Goudé* case have been confirmed and the Joinder Request has been filed, both of which could potentially have a significant impact on this case.

14. The deadline of 6 February 2015 was set taking into consideration the duty to ensure the accused adequate time for the preparation of his defence. In that regard, the Chamber notes that the Prosecution has confirmed that it will respect the deadline of 6 February 2014 in relation to its obligation to disclose all evidence in its possession.¹⁸ Hence, the Suspension Request solely relates to material that may become available to the Prosecution in ongoing investigations in the *Blé Goudé* case.

15. Moreover, the Chamber observes that the Prosecution undertakes that the suspension of the deadline for this specific aspect of its disclosure obligations 'would avoid the Prosecution having to file Regulation 35 requests in order to rely at trial on additional evidence collected after 6 February 2015'.¹⁹

¹⁶ Response, ICC-02/11-01/11-745, para 45-62.

¹⁷ Order, ICC-02/11-01/11-723, para. 6.

¹⁸ Suspension Request, ICC-02/11-01/11-741, para. 13.

¹⁹ Suspension Request, ICC-02/11-01/11-741, para. 12.

16. In light of the above, the Chamber considers that deadline of 6 February 2015 is suspended, solely for the purpose of material that is currently not in the possession of the Prosecution, and which may become available to it as a result of ongoing investigations in the *Blé Goudé* case. However, the Chamber orders the Prosecution to comply with the aforesaid deadline in respect of all material currently in its possession that is subject to disclosure obligations. The Chamber also directs the Prosecution to file its list of witnesses and list of evidence to be relied on at trial by the aforementioned deadline.

17. If the Chamber decides to join the two cases, the Chamber will set a new deadline for the Prosecution to file an updated list of witnesses and list of evidence which is common to both cases and a deadline for the Prosecution to disclose any material acquired in the course of ongoing investigations in the *Blé Goudé* case.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

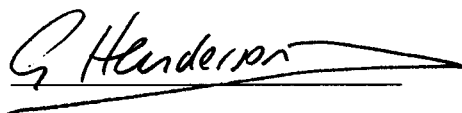
PARTIALLY GRANTS the Suspension Request;

SUSPENDS the deadline of 6 February 2015 for material that may become available to the Prosecution in ongoing investigations in the *Blé Goudé* case, pending a decision on the Joinder Request;

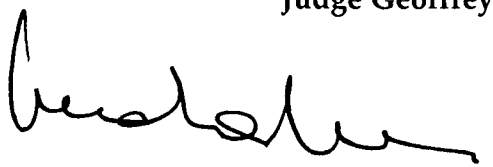
REJECTS the remainder of the Suspension Request, namely to suspend the deadline for submitting the list of witnesses and list of evidence; and

REITERATES that all other deadlines and time limits previously imposed by the Chamber remain in place.

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



Judge Geoffrey Henderson, Presiding Judge



Judge Cuno Tarfusser



Judge Olga Herrera Carbuca

Dated 13 January 2015

At The Hague, The Netherlands