

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 17 November 2014

TRIAL CHAMBER I

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

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

Public

Order setting the commencement date for the trial and the time limit for disclosure

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

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 Article 64(3) of the Rome Statute ('Statute'), Rule 132 of the Rules of Procedure and Evidence (and Regulation 54 of the Regulations of the Court ('Regulations')), issues the following 'Order setting the commencement date for the trial and the time limit for disclosure'.

I. Procedural history

1. On 8 October 2014, in its 'Order scheduling a status conference and setting a provisional agenda' the Chamber ordered the parties and participants to, *inter alia*, submit written observations on the timing of disclosure of evidence in preparation for trial and proposals for the commencement date of the trial.¹
2. After having received written submissions from the Prosecution,² the Defence³ and the Common Legal Representative⁴ ('CLR') on these issues on 27 October 2014, the Chamber held its first status conference on 4 November 2014.⁵

II. Submissions

3. In its oral submissions, the Prosecution noted that the 'vast majority' of evidence has already been disclosed to the Defence.⁶ In light of this factor, amongst others, the Prosecution proposed that the trial in the *Gbagbo* case could commence as early as June or the beginning of July 2015. In relation to time limits for disclosure, the Prosecution stated that full disclosure of everything currently in its possession could be accomplished by the end of

¹ ICC-02/11-01/11-692.

² Prosecution's Submissions on the Provisional Agenda for the 4 November 2014 Status Conference, 27 October 2014, ICC-02/11-01/11-708 ('Prosecution Submissions').

³ *Observations de la Défense concernant l'ordre du jour de la conférence de mise en état prévue le 4 novembre 2014*, 27 Octobre 2014, ICC-02/11-01/11-709-Conf-Exp. Confidential redacted version and public redacted version at ICC-02/11-01/11-709-Conf and ICC-02/11-01/11-709-Red2 ('Defence Written Submissions').

⁴ Submissions in accordance with the "Order scheduling a status conference and setting a provisional agenda" issued on 8 October 2014, 27 October 2014, ICC-02/11-01/11-706 ('CLR Submissions').

⁵ Transcript of hearing on 4 November 2014 ('First Status Conference'), ICC-02/11-01/11-T-25-CONF-ENG CT.

⁶ First Status Conference, ICC-02/11-01/11-T-25-CONF-ENG CT page 67, line 7.

January 2015, but suggested that the Chamber set a time limit for disclosure of no later than three months before the commencement of trial.⁷ The Prosecution also informed the Chamber that it is currently conducting 'confined further investigations' likely to result in 'at least 15' additional witnesses.⁸ The Prosecution submitted that with guidance from the Chamber on a redactions protocol, information relating to these witnesses may be quickly disclosed.⁹

4. In its oral submissions, the Defence requested the Chamber, in setting the date for trial, to take into consideration the 'complexity of the case, the difficulty with regard to resources of the Defence, the number of witnesses to be called by the Prosecution' and other factors, including the difficulty of Defence investigations.¹⁰ The Defence proposed late November or early December 2015 as a 'realistic' start date for trial.¹¹ In relation to time limits for disclosure, the Defence requested six months to prepare for the trial after the last disclosure by the Prosecutor,¹² and requested disclosure of items in the Prosecution's possession as soon as possible and of remaining items on a rolling basis.¹³ Regarding the disclosure of the new items the Prosecution may collect during his on-going investigations, if any, they should be disclosed no later than a month after being collected and on a rolling basis. Having regard to its desired start date for trial, the Defence therefore proposed disclosure of (a) incriminating and exonerating materials in a rolling manner, but completed by 30 May 2015; (b) the identities of all witnesses by 31 May 2015; (c) the list of evidence by 31 May 2015; and (d) 'supplementary documents' by the Prosecutor by 30 June 2015.¹⁴ However, the Defence also did not object to the

⁷ First Status Conference, ICC-02/11-01/11-T-25-CONF-ENG CT, page 66, lines 2-4 and page 22, lines 21-22.

⁸ Prosecution Submissions, ICC-02/11-01/11-708, para. 9; First Status Conference, ICC-02/11-01/11-T-25-CONF-ENG CT, page 8, lines 24-25.

⁹ First Status Conference, ICC-02/11-01/11-T-25-CONF-ENG CT, page 8, lines 24-25 and page 9, lines 1-4.

¹⁰ First Status Conference ICC-02/11-01/11-T-25-CONF-ENG CT, page 63, lines 3-6 and page 63, line 21 to page 64, line 6.

¹¹ First Status Conference, ICC-02/11-01/11-T-25-CONF-ENG CT, page 65, lines 14-17.

¹² First Status Conference ICC-02/11-01/11-T-25-CONF-ENG CT, lines 5-7.

¹³ Defence Written Submissions, ICC-02/11-01/11-709-Red2, paras. 29-38.

¹⁴ First Status Conference, ICC-02/11-01/11-T-25-CONF-ENG CT, page 65, lines 1-8.

Prosecutor's proposal of full disclosure of everything currently in its possession by the end of January.¹⁵

5. In its written submissions, the CLR requested that the trial proceedings commence as soon as possible.¹⁶ During the status conference, the CLR stated that a start date in June 2015 was 'feasible and reasonable'.¹⁷
6. It may be noted that the parties and participants also made submissions to the Chamber on the impact of a possible joinder of this case, the *Gbagbo case*, with the case of *The Prosecutor v. Charles Blé Goudé (Blé Goudé case)*. In respect of these submissions, the Chamber is of the view that it is neither appropriate nor necessary to take these submissions into consideration when the decision on the confirmation of charges is still pending in the *Blé Goudé case*.

III. Analysis

7. The Chamber observes that the parties have proposed appreciably different timelines for the completion of disclosure and the commencement of trial. The Chamber notes, in particular, the Prosecution's submission that, with an efficient redactions protocol in place, full disclosure of material already in its possession can be completed by the end of January 2015.
8. The Prosecution, however, proposes a time limit for full disclosure of no later than three months before the commencement of trial, in order to accommodate any continuing investigations, whilst the Defence maintains that it requires full disclosure six months in advance of trial in order for it to adequately prepare.
9. 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.

¹⁵ First Status Conference, ICC-02/11-01/11-T-25-CONF-ENG CT, page 32, lines 15-17.

¹⁶ CLR Submissions, ICC-02/11-01/11-706, para. 36.

¹⁷ First Status Conference, ICC-02/11-01/11-T-25-CONF-ENG CT, page 69, line 2.

However, a balance must be struck between this obligation and the Chamber's duty to ensure the accused has adequate time and facilities for the preparation of his defence.¹⁸ The Chamber has taken into consideration that the warrant of arrest was issued in this case in November 2011, the confirmation of charges hearing took place in February 2013, and a decision was rendered thereon in June 2014,¹⁹ providing the Prosecution additional time for any further investigations before the start of trial. The Chamber has also considered that the Accused has remained in custody throughout these proceedings.

10. Accordingly, the Chamber sets the commencement date for the trial for 7 July 2015. The Chamber directs the Prosecution to disclose to the Defence all Rule 76 and Rule 77 material on a rolling basis, to disclose all Article 67(2) material as soon as practicable, and in any event to provide full disclosure of all material to the Defence no later than 6-February 2015. By the same date, the Prosecution is directed to provide to the Defence its list of witnesses and list of evidence to be relied on at trial, and to disclose the reports of any expert witnesses to be called by the Prosecution.

11. Further directions on trial-related preparation will be provided by the Single Judge in due course.

¹⁸ Statute, Articles 64 (2), 64 (3)(c), and 67 (1)(b) and (c).

¹⁹ Pre-Trial Chamber III, Warrant of Arrest for Laurent Koudou Gbagbo, 23 November 2011, ICC-02/11-01/11-1; Pre-Trial Chamber I, Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute, 3 June 2013, ICC-02/11-01/11-432, in which the Prosecutor was requested to provide further evidence or conduct further investigation with respect to all of the charges; and Pre-Trial Chamber I, Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-01/11-656-Red.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

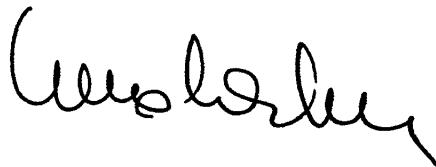
ORDERS the Prosecution to effectuate disclosure in accordance with its directions as provided in paragraph 10 of this Order;

SETS the commencement date for the trial for 7 July 2015.

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



Judge Geoffrey Henderson, Presiding Judge



Judge Cuno Tarfusser



Judge Olga Herrera Carbuca

Dated 17 November 2014

At The Hague, The Netherlands