

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15
Date: 18 September 2015

TRIAL CHAMBER I

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

**Decision on the Defence request for leave to appeal
the 'Directions on the conduct of the proceedings'**

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
Mr Eric MacDonald

Counsel for 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**

**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 and Charles Blé Goudé*, with regard to Article 82(1)(d) of the Rome Statute ('Statute') issues the following 'Decision on the Defence request for leave to appeal the "Directions on the conduct of the proceedings"'.

I. Procedural History

1. On 3 September 2015, the Chamber issued a decision giving 'Directions on the conduct of the proceedings' ('Directions').¹
2. On 9 September 2015, the defence team for Mr Laurent Gbagbo ('Gbagbo Defence') filed a request ('Request') seeking leave to appeal the Directions.²
3. On 14 September 2015, the Office of the Prosecutor ('Prosecution') filed its response to the Request.³

II. Submissions

4. In its Request, the Gbagbo Defence seeks leave to appeal three issues for which it considers the Chamber erred.⁴
5. Under the First Issue, the Gbagbo Defence seeks leave to appeal the Chamber's direction requiring the Prosecution to provide its list of witnesses it intends to call the following month by the 20th of the month, with any updates by Thursday of each week, arguing that the Chamber's Directions did not give the Gbagbo Defence enough time for it to prepare for examination of witnesses after the Prosecution provides its notification.⁵ Under the Second Issue, the Gbagbo Defence asserts that Rule 140(2)(c) of the Rules provides

¹ Directions on the conduct of the proceedings, 3 September 2015, ICC-02/11-01/15-205.

² *Demande d'autorisation d'interjeter appel de la décision portant sur les «Directions on the conduct of the proceedings»* (ICC-02/11-01/15-205), 9 September 2015, ICC-02/11-01/15-209.

³ Prosecution's response to Laurent Gbagbo's Application for Leave to Appeal the "Directions on the conduct of the proceedings" (Prosecution's Response), 14 September, ICC-02/11-01/15-218.

⁴ Request, ICC-02/11-01/15-209.

⁵ Request, ICC-02/11-01/15-209, paras 18 -19.

that the Chamber may only question a witness before or after the witness is questioned by a party, and that the Chamber therefore erred in stating that it could question the witnesses at any time.⁶ Under the Third Issue, the Gbagbo Defence argues that the Chamber erred in deciding that the calling party must submit its corrections to transcripts, if any, to the Registry within five working days and must submit any lesser redacted versions within one week of the notification of the public redacted version of the transcript.⁷ The Gbagbo Defence argues that the Chamber did not give it enough time to request corrections or to provide redactions.⁸ The Gbagbo Defence further claims that the lack of reasoning in the Chamber Directions violated Mr Gbagbo's right to a fair trial.⁹

6. In response, the Prosecution asks the Chamber to dismiss the Request in its entirety, arguing that none of the issues presented constitute appealable issues or meet the criteria for leave to appeal under Article 82(1)(d) of the Statute.¹⁰ The Prosecution argues that, under the First Issue, the Gbagbo Defence misstates the amount of time it will have available to prepare and that the Gbagbo Defence's arguments constitute 'mere disagreement' with the Chamber's Directions.¹¹ Under the Second Issue, the Prosecution asserts that the Gbagbo Defence misinterprets the Chamber Directions. The Prosecution argues that Rule 140(c) of the Rules provides that the Chamber has a general right to question a witness before or after the parties' questioning, and does not prevent a trial chamber from asking relevant questions to a witness at any other moment.¹² The Prosecution avers that the Third Issue is not appealable within the meaning of Article 82(1)(d) of the Statute and constitutes 'mere

⁶ Request, ICC-02/11-01/15-209, paras 24-25.

⁷ Request, ICC-02/11-01/15-209, para. 29.

⁸ Request, ICC-02/11-01/15-209, paras 35-39.

⁹ Request, ICC-02/11-01/15-209, paras 16-17, 39,44

¹⁰ Prosecution's Response, ICC-02/11-01/15-218, para. 1.

¹¹ Prosecution's Response, ICC-02/11-01/15-218, para. 2.

¹² Prosecution's Response, ICC-02/11-01/15-218, para. 4.

disagreement' with a discretionary trial management decision, noting that the Gbagbo Defence merely repeats its arguments previously submitted to the Chamber.¹³

III. Analysis

7. The Chamber recalls the applicable law relating to Article 82(1)(d) of the Statute as set out in previous decisions.¹⁴
8. Insofar as the Gbagbo Defence argues in respect of the First and Third Issues that the Chamber should have given greater weight to its submissions concerning the amount of time the Defence team needs to (i) prepare for examination of witnesses, (ii) propose corrections to the transcripts, and (iii) submit lesser redacted versions of the transcripts, the Chamber considers that these arguments were made and duly considered when it issued its Directions.¹⁵ The Chamber also notes with concern that the Gbagbo Defence's arguments concerning the amount of time that it has been given to prepare for examination of Prosecution witnesses grossly understates the total amount of time the Defence teams have had and will have, in the course of the proceedings, to prepare for the examination of witnesses.¹⁶ In terms of the Article 82(1)(d) criteria, the Chamber is unpersuaded that these issues significantly affect the fair and expeditious conduct of the proceedings, the outcome of trial, or that granting leave to appeal would materially advance the proceedings. If the Gbagbo Defence has good cause for requesting an extension of these time limits, it may do so in accordance with Regulation 35 of the Regulations – appellate intervention is simply not required.

¹³ Prosecution's Response, ICC-02/11-01/15-218, para. 5.

¹⁴ See Decision on request for leave to appeal the 'Decision on objections concerning access to confidential material on the case record', 10 July 2015, ICC-02/11-01/15-132, para. 3 and the decisions cited in footnote 5.

¹⁵ *Soumissions de la Défense quant à la conduite de la procédure*, 21 May 2015, ICC-02/11-01/15-74-Anx, pages 5 and 31.

¹⁶ Request, ICC-02/11-01/15-209, paras 19-20.

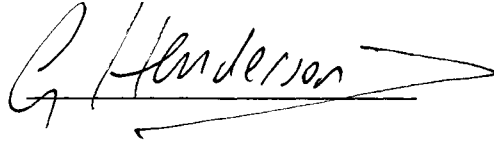
9. In respect of the Second Issue, the Chamber also considers that it does not meet the criteria of Article 82(1)(d) of the Statute, as the interpretation of Rule 140(2)(c) of the Rules advanced by the Gbagbo Defence finds no basis in the Statute, Rules or Regulations. The authority of the Chamber to intervene while counsel is questioning a witness is not only consistent with a proper exercise of juridical functions during the trial, but is also provided for in, *inter alia*, Article 64(8)(b) of the Statute, Rule 88(5) of the Rules, and Regulation 43 of the Regulations. In addition, the literal interpretation of Rule 140(2)(c) does not exclude the Chamber's intervention in the manner provided for in the Directions. The Chamber observes, in this regard, that no other Trial Chamber has interpreted the rule in the manner put forward by the Gbagbo Defence.¹⁷ For these reasons, the Chamber is unpersuaded that granting leave to appeal on this issue would materially advance the proceedings.

¹⁷ Trial Chambers of the Court have held that a Chamber may 'ask questions whenever the Judges consider it appropriate', 'at any stage of the testimony, including before the questions from the calling party' and 'at any time'. See Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Hearing of 16 January 2009, ICC-01/04-01/06-T-104-ENG ET WT pages 37 line 25 to page 38 lines 1-3; Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Directions for the conduct of proceedings and testimony in accordance with rule 140, 1 December 2009, ICC-01/04-01/07-1665-Corr para. 14; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Directions for the Conduct of Proceedings, 19 November 2010, ICC-01/05-01/08-1023, para. 7; Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Conduct of Trial Proceedings (General Directions), 9 August 2013, ICC-01/09-01/11-847-Corr, para. 17; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on the conduct of proceedings, 2 June 2015, ICC-01/04-02/06-619, para. 23.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request.

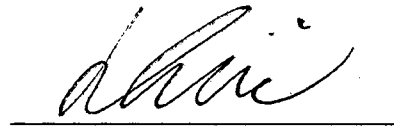
Done in both English and French, the English version being authoritative

A handwritten signature in black ink, appearing to read 'G. Henderson', written over a horizontal line.

Judge Geoffrey Henderson, Presiding Judge

A handwritten signature in black ink, appearing to read 'Olga C.', written over a horizontal line.

Judge Olga Herrera Carbuccion

A handwritten signature in black ink, appearing to read 'Bertram', written over a horizontal line.

Judge Bertram Schmitt

Dated 18 September 2015

At The Hague, The Netherlands