

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15
Date: 28 October 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
URGENT**

**Decision granting the request of the Gbagbo Defence and
re-scheduling opening statements**

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

Mr Alain Dumez

Dr Pierre Lamothe

Dr Bertrand Ludes

Trial Chamber I ('Chamber') of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, with regard to Articles 64(2), (7), and 8(a) and 67 of the Rome Statute ('Statute') and Regulation 35 of the Regulations of the Court ('Regulations') issues the following 'Decision granting the request of the Gbagbo Defence and re-scheduling opening statements'.

1. On 7 May 2015, the Chamber set the commencement date for trial, ordering that opening statements start on 10 November 2015. The Chamber also determined that the Office of the Prosecutor ('Prosecution') would start its presentation of evidence in January 2016, at a date to be confirmed.¹
2. On 7 September 2015, the Chamber, ruling on a request of the Prosecution,² decided that it was 'timely to conduct a medical examination of Mr Gbagbo under Rule 135 of the Rules'.³
3. On 30 September 2015, having considered supplemental submissions thereon,⁴ the Chamber issued an 'Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules'. In that order, the Chamber instructed three chosen experts ('Appointed Experts') to provide their respective reports on Mr

¹ Order setting the commencement date for trial, ICC-02/11-01/15-58, para. 16.

² Prosecution's request for the medical examination of Laurent Gbagbo, 19 June 2015, ICC-02/11-01/15-94-Conf-Exp with a confidential, *ex parte* annex. See also *Réponse de la Défense à la «Prosecution's request for the medical examination of Laurent Gbagbo»* (ICC-02/11-01/15-94-Conf-Exp), 13 July 2015, ICC-02/11-01/15-133-Conf-Exp. A confidential, *ex parte* redacted version, available to the Prosecution, was filed on the same day (ICC-02/11-01/15-133-Conf-Exp-Red). On 8 September 2015, and in accordance with the Decision of 7 September 2015, the Gbagbo Defence filed a lesser redacted version of its response (*Version moins expurgée de la « Réponse de la Défense à la «Prosecution's request for the medical examination of Laurent Gbagbo»* (ICC-02/11-01/15-94-Conf-Exp) » déposée le 13 juillet 2015 (ICC-02/11-01/15-133-Conf-Exp), 8 September 2015, ICC-02/11-01/15-133-Conf-Exp-Red2).

³ Decision granting in part the Prosecution request for an examination of Mr Gbagbo pursuant to Rule 135 of the Rules and instructing the parties to file supplemental submissions concerning the selection of expert(s) ('Decision to conduct a medical examination'), ICC-02/11-01/15-206-Conf-Exp, para. 9.

⁴ *Soumissions de la Défense concernant le type d'expertise à ordonner pour évaluer la capacité à être jugé de Laurent Gbagbo et identifiant les experts les plus à même de mener une telle expertise*, 15 September 2015, ICC-02/11-01/15-221-Conf-Exp with four confidential, *ex parte*, annexes; Prosecution's supplemental submissions concerning the selection of experts (ICC-02/11-01/15-206-Conf-Exp), 15 September 2015, ICC-02/11-01/15-219-Conf-Exp with three confidential, *ex parte* annexes.

Gbagbo's current health condition by 29 October 2015. It also scheduled a hearing to be held in private session on 5 November 2015.⁵

4. On 27 October 2015, the Defence team for Mr Gbagbo ('Gbagbo Defence') filed a request ('Request') asking the Chamber to order the attendance of the Appointed Experts at the 5 November 2015 hearing, to provide the parties an opportunity to question the experts.⁶
5. On 28 October 2015, by way of email, the Chamber shortened the time limit for the Prosecution to respond to the Request.⁷
6. On 28 October 2015, the Gbagbo Defence filed a request pursuant to Regulation 35 of the Regulations for an extension of the time limit ('Request for Extension') for it to notify the parties and participants of the material it intends to use for opening statements.⁸
7. On 28 October 2015, the Prosecution filed its response to the Request,⁹ noting that the basis for the Request is unsubstantiated and submitting that deciding on the Request now would be premature, in light of the fact that the Chamber has not yet received the reports from the Appointed Experts.¹⁰
8. The Chamber recalls that the purpose of ordering the medical examination was to facilitate the adjudication of any issues as to Mr Gbagbo's fitness to stand trial, as well as any practical modalities needed to facilitate his

⁵ Order to conduct an examination of Mr Gbagbo under Rule 135 of the Rules ('Order appointing three experts'), 30 September 2015, ICC-02/11-01/15-253-Conf.

⁶ *Requête aux fins d'ordonner la présence des trois experts nommés par la Chambre lors de l'audience du 5 novembre 2015*, ICC-02/11-01/15-318-Conf-Exp.

⁷ Email communication from an Associate Legal Officer of the Trial Chamber to the Prosecution and Gbagbo Defence on 28 October 2015 at 10:07.

⁸ *Requête aux fins de prorogation du délai donné par la Chambre aux parties et aux participants pour notifier les autres parties et participants des «materials» utilisés lors des déclarations d'ouverture*, ICC-02/11-01/15-319.

⁹ Prosecution's Response to Laurent Gbagbo's '*Requête aux fins d'ordonner la présence des trois experts nommés par la Chambre lors de l'audience du 5 novembre 2015*' ('Prosecution response'), ICC-02/11-01/15-321-Conf-Exp.

¹⁰ Prosecution Response, ICC-02/11-01/15-321-Conf-Exp, paras 1 and 7.

attendance at trial,¹¹ and 'to obtain a full picture of Mr Gbagbo's health situation and attendant capacities leading up to trial'.¹²

9. In the Request, the Gbagbo Defence asks the Chamber to order the 'Appointed Experts' to appear at the hearing, for the sake of transparency and in order to allow the parties the opportunity to question the Appointed Experts on the methodology for their examinations and the contents of their reports.¹³ The Chamber notes the submission of the Prosecution that the reasons underlying the Request are unsubstantiated.¹⁴ Nonetheless, the Chamber considers that – without prejudice to the Chamber's view on the issues raised in the Request – allowing the Chamber, Prosecution and Gbagbo Defence an opportunity to question the Appointed Experts concerning their reports will further facilitate the Chamber adjudicating any issues which may arise therefrom.

10. However, the Chamber considers that the current sitting schedule for the hearing on 5 November 2015 may not provide sufficient time for this purpose. In light of the current Court calendar, the Chamber considers it most expedient that the hearing is re-scheduled for 10-12 November 2015 to allow it to take place on consecutive days.

11. In light of this, and considering the Chamber's obligation to carefully evaluate and consider the reports submitted by the Appointed Experts, as well as the parties' observations in this regard, and without prejudice to any decision to be rendered thereon, the Chamber re-schedules opening statements to start on Thursday, 28 January 2016. The Chamber considers that no prejudice will be caused to Mr Gbagbo and Mr Blé Goudé from the new sitting schedule, as the

¹¹ Decision to conduct a medical examination, ICC-02/11-01/15-206-Conf-Exp, paras 9-12.

¹² Order appointing three experts, ICC-02/11-01/15-253-Conf, para. 9; Transcript of hearing of 6 June 2015, ICC-02/11-01/15-T-2-Conf-Exp-ENG ET, page 18, lines 2-7 and page 19, lines 13-16.

¹³ Request, ICC-02/11-01/15-318-Conf-Exp, paras 9-10.

¹⁴ Prosecution Response, ICC-02/11-01/15-321-Conf-Exp, para. 4.

Prosecution shall commence with the presentation of its evidence directly thereafter.¹⁵

¹⁵ ICC-02/11-01/15-58, para. 16.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Request;

DECIDES the Gbagbo Defence's Request for Extension is moot;

ORDERS the Registry to notify the present decision and the Request (ICC-02/11-01/15-318-Conf-Exp) to the Appointed Experts;

RESCHEDULES the hearing to be held in private session with the Gbagbo Defence, Defence for Mr Blé Goudé, the Prosecution, the Legal Representative for Victims and the Registry for 10-12 November 2015;

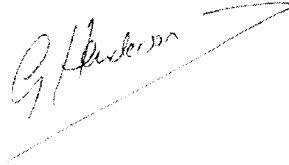
RESCHEDULES the opening statements to Thursday, 28 January 2016, with the Prosecution's presentation of its evidence to begin directly thereafter;

ORDERS the Defence to notify the Chamber by 12 January 2016 whether it intends to make opening statements at the commencement of trial;

ORDERS the Gbagbo Defence to file, no later than 29 October 2015, a confidential version of ICC-02/11-01/15-318-Conf-Exp, with redactions if necessary; and,

ORDERS the Prosecution to file, no later than 30 October 2015, a confidential version of ICC-02/11-01/15-320-Conf-Exp, with redactions if necessary.

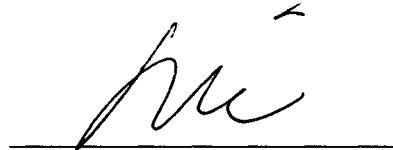
Done in both English and French, the English version being authoritative



Judge Geoffrey Henderson, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Bertram Schmitt

Dated 28 October 2015

At The Hague, The Netherlands