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No.: ICC-02/11-01/15
Date: 23 January 2017

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

Public

Order requesting the parties and participants to submit information for the purposes of the conduct of the proceedings pursuant to article 64(2) of the Statute and rule 140 of the Rules of Procedure and Evidence

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 the Victims

Legal Representatives of the 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

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Cuno Tarfusser, Presiding Judge of Trial Chamber I, on the basis of detailed information on the ongoing trial as it developed since its opening on 28 January 2016, issues this order with a view to complying with the Chamber's and his own responsibilities under article 64(2) of the Statute and under rule 140 of the Rules of Procedure and Evidence, with due regard to article 67(1)(b) of the Statute.

1. One year into the proceedings, and mindful of the Chamber's and his responsibilities under the statutory texts, the Presiding Judge deems it necessary to take stock of the way in which the trial has unfolded throughout the course of the year 2016, namely on the basis of figures and information extracted from the court records. The stocktaking exercise is directly instrumental to the statutory trial management powers and is undertaken with a view to determining whether, at this stage, measures aimed at streamlining and maximising the efficiency of the proceedings can be identified and implemented.

2. Figures provided by the Registry include the following:

- a) The Chamber sat for 96 hearing days, of which 93 were devoted to witnesses' testimonies;
- b) During the course of such hearings, 29 witnesses were heard;
- c) The hearing of those 29 witnesses required 258 hours, of which the Prosecutor used 105, the Defence for Mr Gbagbo 115 and the Defence for Mr Blé Goudé 36.

3. The Chamber has noted with concern that the witnesses heard to this day only represent about one fifth of the overall amount of witnesses (140) listed by the Prosecutor. If the trial were to continue along the same lines, a projection based on the average pace of questioning so far and a court calendar of about 120-130 sitting days per year shows that the Prosecutor's case would only finish in mid-2019 at the earliest. The 120-130-day projection results from several constraints affecting both this specific trial and the Court

as a whole: in particular, (i) the limitations entailed by Mr Gbagbo's state of health, (ii) the concurrent commitments of the judges, all of whom are engaged also in other Chambers and (iii) the fact that the ASP elected not to provide funding allowing the simultaneous holding of more than two trials. On this basis, and more specifically, the estimated time for examination of the remaining 111 witnesses would approximately require 355 hours for the Prosecutor and 509 hours for the Defence: this would mean that 864 hours, totalling about 311 court days, would still be necessary for the OTP case to finish.

4. The overall reliability of this projection seems confirmed by the information recently received from the Prosecutor. On 18 January 2017, the Prosecutor submitted by email its latest projection, envisaging that as few as ten Prosecution witnesses be heard in the first quarter of the current calendar year; this additional information, far from allaying the Chamber's concern, makes the projected scenario all the more worrisome.

5. In the view of the Chamber, this outlook is not only disappointing, but inherently unsustainable and requires to be promptly and firmly addressed.

6. First, it is the duty of the Chamber to ensure that the duration of a trial remains within reasonable time limits, no matter how complex or intricate the issues at stake. This is required, first and foremost, by the accused's right to be tried without undue delay and by the principle of the expeditiousness as fundamental tenet of a fair trial.

7. Second, the need for the Chamber to remain alert to the issue of expeditiousness and efficiency is made all the more crucial and acute by the protracted state of detention of both accused, which for Mr Gbagbo reached the duration of five years in November 2016.

8. Third, the Chamber is mindful of the amount of public resources required by the ongoing trial and of the ensuing need to ensure that those resources are strictly managed in accordance with the principle of judicial

efficiency, obviously to the extent that this is compatible with the overarching principle of the right to a fair trial.

9. In light of the above, it is necessary to request the parties and the Legal Representative of Victims to submit their realistic assumptions as to the future conduct of the trial in making their case. Whilst the Chamber is mindful that a reasonable degree of approximation, especially on the side of the Defence, may still be required at this stage, it nevertheless requests the parties and the LRV to substantiate those assumptions by specific information. There is a need for the Chamber to be in a position to plan having before it a precise short-term outlook (ie, a three-to-six-month projection), a reasonably precise mid-term outlook (ie, until the end of the Prosecutor's case) and a realistic long term projection (ie, until the end of the Defence case).

10. In particular, the Presiding Judge requests from the Prosecutor an overall list containing the calling order of all of the Prosecution witnesses who still remain to be heard, detailing for each of them the expected questioning time and whether applications under rule 68 of the Rules and/or for in-Court Protective Measures are envisaged. Moreover, the Presiding Judge orders the Prosecutor to file a consolidated application under rule 68 for all concerned witnesses no later than 28 February 2017.

11. The Presiding Judge also requests the OTP to file a consolidated submission of documentary evidence by 28 February 2017. The current practice of piecemeal submission of documentary evidence has proven to be inefficient. This consolidated submission is without prejudice to the further submission of additional documentary evidence if necessary. Obviously an appropriate time limit will be set for both Defence teams and LRV to respond once the submission is received.

12. As regards the Defence, it would be very useful to the Chamber to obtain - already at this stage and to the extent this is feasible - information as to an approximate estimate of the number of witnesses they envisage to call,

as well as to know whether they intend to request a suspension of the proceedings between the end of the presentation of the Prosecutor's case and the presentation of their own and, in the affirmative, its expected duration.

FOR THESE REASONS, THE PRESIDING JUDGE

ORDERS the Prosecutor to file

no later than **Tuesday 31 January 2017**:

- (i) information as to the amount of time she expects to still require in presenting her case;
- (ii) a list containing the calling order of all remaining Prosecution witnesses, also detailing for each of them the expected time required for questioning and whether applications under rule 68 and/or for ICPM are envisaged, and

no later than **Tuesday 28 February 2017**:

- (iii) a consolidated application under rule 68 for all her remaining witnesses;
- (iv) a consolidated submission of documentary evidence;

INVITES the LRV to provide, no later than **Friday 3 February 2017**, information

- (i) as to which Prosecutor's witnesses she intends to request leave to question and
- (ii) as to whether she intends to apply to present evidence or to call witnesses, including an estimate as to the amount of time which the presentation of such evidence would require if the application were granted;

INVITES the Defence for Mr Gbagbo and the Defence for Mr Blé Goudé to each provide, no later than **Friday 10 February 2017**, information as to the

amount of time they expect to require in making their case, including - to the extent that this is feasible -

- (i) an overall estimate of the number of the witnesses they envisage to call;
- (ii) an indication whether they will be requesting a suspension of the proceedings before starting with the presentation of their own case, and, in the affirmative, an approximate estimate of the duration of such suspension.

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



Judge Cuno Tarfusser
Presiding Judge

Dated this 23 January 2017

At The Hague, The Netherlands