

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/11-01/15
Date: 9 February 2018

TRIAL CHAMBER I

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

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

Public

Order on the further 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

Fatou Bensouda
James Stewart
Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Geert-Jan Alexander Knoops
Claver N'dry

Legal Representatives of Victims

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 of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 61(9), 64(3)(a) and 67 of the Rome Statute (“Statute”), Rule 132(2) of the Rules of Procedure and Evidence (“Rules”) and paragraphs 1, 43 and 44 of the Directions on the conduct of the proceedings (“Directions”)¹, issues this Order on the further conduct of the proceedings.

1. On 28 August 2017, the Chamber indicated that, according to the current schedule at the time, the Prosecutor would complete the presentation of her evidence before the Court’s winter recess and requested the Defence teams and the Legal Representative of Victims (“LRV”) to file submissions as to the subsequent stages of the proceedings. More specifically, the LRV was requested to indicate whether she would apply to present evidence and to provide an estimate of the amount of time she would require for its presentation; the Defence teams were requested to indicate approximately the number of witnesses they envisaged to call and whether they would request a suspension of the proceedings before starting with the presentation of their evidence.²
2. On 2 October 2017, submissions pursuant to this order were filed by the LRV³, the Defence for Mr Gbagbo⁴ and the Defence for Mr Blé Goudé⁵.
3. On 15 December 2017, in accordance with the time limit set by the Chamber, the LRV submitted her application for the introduction of documentary evidence under paragraphs 43-44 of the Directions, indicating that she would only seek the introduction and submission of one item of documentary evidence.⁶

¹ ICC-02/11-01/15-498-AnxA.

² ICC-02/11-01/15-T-181-ENG, page 2, lines 7-20.

³ ICC-02/11-01/15-1039.

⁴ ICC-02/11-01/15-1041-Red.

⁵ ICC-02/11-01/15-1040-Red.

⁶ ICC-02/11-01/15-1088. The item is contained in confidential (respectively ex parte and redacted) Annexes A and B to the filing.

4. On 20 November 2017, the Chamber granted the request by the Defence for Mr Gbagbo,⁷ supported by the Defence for Mr Blé Goudé,⁸ to postpone the commencement of the testimony of Witness P-0564 until the week of 15 January 2018, with a view to allowing the parties to adequately prepare on material pertaining to the testimony which had only been disclosed by the Prosecutor in October and November 2017.⁹ Witness P-0564 testified before the Chamber on 17 and 19 January 2018.¹⁰ Before adjourning the hearing, the Presiding Judge indicated that the Chamber would issue a decision on the continuation of the trial in due course.¹¹
5. On 15 January 2018, by email, the Chamber granted the joint request by the Defence for Mr Gbagbo, the Defence for Mr Blé Goudé and the LRV to extend until 9 February 2018 the time limit for responses to the “Prosecution’s application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of the proceedings” dated 22 December 2017.¹² These responses will be the last expected from the parties and participants on the applications for the introduction of documentary evidence submitted by the Prosecutor.
6. On 26 January 2018, the “Prosecution’s request for preliminary directions related to preparations for the presentation of evidence by the Defence, for a time limit on Defence requests and/or for a Status Conference” was filed (“Prosecutor’s Request”).¹³ On 29 January 2018, the LRV indicated by email to the Chamber

⁷ ICC-02/11-01/15-1062.

⁸ ICC-02/11-01/15-1065.

⁹ ICC-02/11-01/15-1073-Conf.

¹⁰ ICC-02/11-01/15-T-219 and ICC-02/11-01/15-T-220.

¹¹ ICC-02/11-01/15-T-220-ENG, page 91, lines 6-9.

¹² ICC-02/11-01/15-1092 and confidential annexes.

¹³ ICC-02/11-01/15-1113-Conf.

that she would not file a response; on the same day, the Defence for Mr Gbagbo and the Defence for Mr Blé Goudé, also by email, stated they would respond.

7. On 30 January 2018, the Defence for Mr Blé Goudé filed its response,¹⁴ requesting the Chamber to reject the Prosecutor's Request since (i) it disregards the Chamber's indication to the effect that a decision on the presentation of the evidence by the Defence would be issued in due course; (ii) it addresses issues arising either from the amended directions on the conduct of the proceedings or from previous filings by the Defence teams to which she had chosen not to respond; (iii) it interferes with the Chamber's discretion to determine the course of the proceedings.
8. On 2 February 2018, the Defence for Mr Gbagbo filed its response to the Prosecutor's Request.¹⁵
9. The Chamber has noted with concern the submissions by the Defence for Mr Gbagbo, in particular the reiterated statements to the effect that it is not yet in a position to properly assess "the Prosecutor's case", or to examine the Prosecutor's evidence, including due to the fact that corrected versions of the transcripts have not yet been made available; that it is only once it will dispose of all the corrected transcripts that it will *inter alia* be able to analyse "*en profondeur*" the witnesses' testimonies; that only once it has completed this analysis (for which at least four months since the formal closure of the Prosecutor's case are estimated) will it be able to decide whether or not to file a motion requesting to exclude one or more of the charges (which application would require an additional month, at least); that, once this decision will have been made, it will require at least six additional months to investigate; and, finally, that only at that stage will the Defence be in a position to provide the

¹⁴ ICC-02/11-01/15-1116-Conf.

¹⁵ ICC-02/11-01/15-1121-Conf.

Chamber and the parties with its list of witnesses. The Chamber notes that the Defence for Mr Gbagbo seems to rely on the assumption not only that all the Defence work on the case is yet to be done, notwithstanding the fact that these proceedings have been ongoing for several years (and that Lead Counsel for Mr Gbagbo has been in place since the very beginning), but also that the clock for this work has yet to start running. The Chamber finds this perspective grounded on a distorted conception of the relevant procedural framework, hardly reconcilable not only with the principle of the expeditiousness of the proceedings, but also with the overall notion of fairness of the trial. However, since this order has the effect of rendering the Prosecutor's Request moot, it is not necessary for the Chamber to address the merits of the Response by the Defence for Mr Gbagbo in detail at this stage.

10. The Chamber recalls that the Defence for Mr Gbagbo had indicated that, for the Defence and the Chamber to be able to appreciate and assess the Prosecutor's case (in particular in light of the significant number of witnesses withdrawn since the opening of the trial), the Prosecutor should provide an amended pre-trial brief, where all the evidentiary items submitted and the testimonies would be specifically linked to each of the charges.¹⁶ At this stage, in accordance with its statutory powers and responsibilities and with a view to meeting its obligation to ensure the fairness and expeditiousness of the trial, the Chamber considers it indeed necessary to invite the Prosecutor to file a trial brief containing a detailed narrative of her case in light of the testimonies heard and the documentary evidence submitted at trial. More specifically, she should indicate to the Chamber in which way she thinks the evidence supports each of the elements of the different crimes and forms of responsibility charged.

¹⁶ ICC-02/11-01/15-1041-Red, para. 46.

11. The Chamber notes that, for the trial brief to best serve its purpose as an auxiliary tool to the benefit of both the Chamber and the parties and participants, the Prosecutor shall (i) adopt a clear and simple structure, avoiding repetitions, cross-references and circularity; (ii) ensure that each footnote only includes references to the specific items of evidence supporting the specific statement the footnote is appended to; (iii) avoid making references to evidence in bulk. The Chamber trusts that this methodology will allow the Prosecutor to remedy some of the difficulties raised by the pre-trial brief – not only encountered and exposed by the Defence,¹⁷ but also noted by the Chamber – and, consequently, contribute to focus the debate on matters of substance.
12. For the purposes of the preparation of the trial brief, the Prosecutor may refer to any evidence which she seeks to submit through pending applications pursuant to paragraphs 43 and 44 of the Directions¹⁸. A decision on the submission of this evidence (as well as of the document the LRV seeks to submit)¹⁹ will be issued by the Chamber in due course.
13. If the Prosecutor intends to withdraw any or all of the charges in accordance with article 61(9) of the Statute, she shall petition the Chamber as soon as possible.
14. Once the Defence teams have received the updated trial brief, they will be in a position to make written observations on the continuation of the trial proceedings. Each Defence team shall indicate whether or not they wish to make any submission of a no case to answer motion or, in any event, whether they intend to present any evidence. Should they intend to present any evidence, the Defence is further instructed to indicate to the Chamber (i) which

¹⁷ ICC-02/11-01/15-1041-Red, para. 31.

¹⁸ ICC-02/11-01/15-853; ICC-02/11-01/15-895; ICC-02/11-01/15-998; ICC-02/11-01/15-1089 ; ICC-02/11-01/15-1092.

¹⁹ ICC-02/11-01/15-1088.

aspects of the Prosecutor's case they do not contest, (ii) which aspects they intend to challenge by way of presenting additional evidence; and (iii) whether they intend to submit evidence in relation to facts and circumstances that have hitherto not been the discussed during the trial (if so, a brief outline of those alleged facts should be provided).

15. For the purposes of the trial brief and of the subsequent submissions, the parties are allowed to exceed the 20-page limit set forth in Regulation 37 of the Regulations of the Court. Whilst not setting a specific page-limit, the Chamber considers it reasonable to expect that the trial brief shall not exceed 300 pages and the subsequent submissions (which are not meant as specific, point-by-point response to the brief but should rather focus on the elements listed in paragraph 14 above) shall reasonably not exceed 50 pages.

FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY

INVITES the Prosecutor to file, no later than 30 days after notification of this order, a trial brief illustrating her case and detailing the evidence in support of the charges;

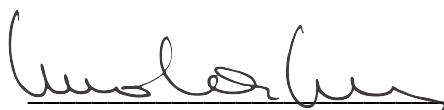
ORDERS the Defence for Mr Gbagbo and the Defence for Mr Blé Goudé to make submissions as stated in paragraph 14 above no later than 30 days after notification of the aforesaid brief;

DECIDES that, for the purposes of the trial brief and of the subsequent submissions, the parties are allowed to exceed the 20-page limit set forth in Regulation 37 of the Regulations of the Court;

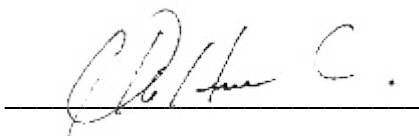
DECIDES that, in light of this order, the Prosecutor's Request is moot;

ORDERS the Prosecutor and the Defence for Mr Gbagbo to file a public redacted version of their respective filings, no later than Friday 16 February 2018;

ORDERS the Registrar to reclassify filing ICC-02/11-01/15-1116-Conf as public.



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuca



Judge Geoffrey Henderson

Dated 9 February 2018

At The Hague, The Netherlands