

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 19 December 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

Prosecution's Request for Partial Suspension of the "Order setting the commencement date for the trial and the time limit for disclosure"

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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1. The Office of the Prosecutor (“Prosecution” or “OTP”) requests that Trial Chamber I (“Chamber”) suspend the discrete portion of the “Order setting the commencement date for the trial and the time limit for disclosure” that requires the Prosecution to provide the Defence with full disclosure of all material, a list of witnesses and a list of evidence no later than 6 February 2015,¹ until the Chamber has ruled on the Prosecution’s Application to join the Gbagbo and Blé Goudé cases.² The Prosecution will nevertheless comply with the Chamber’s order to disclose to the Defence of Mr Gbagbo all material currently in its possession by 6 February 2015.

Procedural background

2. On 12 June 2014, the decision on the confirmation of charges against Mr Laurent Gbagbo (“Gbagbo confirmation decision”) was issued by Pre-Trial Chamber I.³
3. On 17 November 2014, the Chamber issued the “Order setting the commencement date for the trial and the time limit for disclosure” ordering the Prosecution to provide full disclosure of all material to the Defence no later than 6 February 2015 (the “Trial Order”).⁴
4. On 11 December 2014, the decision on the confirmation of charges against Mr Charles Blé Goudé (“Blé Goudé confirmation decision”) was issued by Pre-Trial Chamber I.⁵
5. On 16 December 2014, the Prosecution filed its “Request to join the cases of the *Prosecutor v. Laurent Gbagbo* and the *Prosecutor v. Charles Blé Goudé*” (the “Joinder Application”) in the Gbagbo case.⁶

¹ ICC-02/11-01/11-723.

² ICC-02/11-01/11-738.

³ ICC-02/11-01/11-656-Red and ICC-02/11-01/11-656-Anx.

⁴ ICC-02/11-01/11-723, para. 10.

⁵ ICC-02/11-02/11-186 and ICC-02/11-02/11-186-Anx.

⁶ ICC-02/11-01/11-738.

6. On 18 December 2014, the Registry transferred the record of the proceedings case of the Blé Goudé case to the Presidency.⁷

Submission

7. Article 64(3)(a) of the Rome Statute (“Statute”) gives a Trial Chamber the power to suspend the execution of certain orders if this is “necessary to facilitate the fair and expeditious conduct of the proceedings”.⁸
8. In its recent Joinder Application, the Prosecution has submitted that the cases against Mr Gbagbo and against Mr Blé Goudé are essentially one and the same.⁹ Both accused are charged, inter alia, with sharing a common plan or purpose and with acting in a coordinated manner to implement the common plan, which resulted in the commission of the crimes. Further, in both the Gbagbo confirmation decision¹⁰ and the Blé Goudé confirmation decision,¹¹ the Pre-Trial Chamber found that both Accused shared a common plan or purpose and that they acted in a coordinated manner to implement the common plan, which resulted in the commission of the crimes. As a result, there is a substantial likelihood that the two cases will be joined and tried together pursuant to Article 64(5) of the Statute and Rule 136 of the Rules of Procedure and Evidence.
9. In addition, in its Joinder Application the Prosecution informed the Chamber that it intends to adduce almost the same evidence in both cases.¹² However, due to the lateness of the arrest and transfer of Mr Blé Goudé to the Court and the commencement of the pre-trial phase in that case, the investigations in the two cases are at somewhat different stages. The Prosecution is continuing its

⁷ ICC-02/11-02/11-191.

⁸ Similar suspensions have been ordered previously in terms of this Article.. See for instance ICC-01/04-01/06-T-314-ENG, pages 21-22; ICC-01/05-01/08-811.

⁹ Joinder Application, paras.10-16.

¹⁰ ICC-02/11-01/11-656-Red and ICC-02/11-01/11-656-Anx.

¹¹ ICC-02/11-02/11-186 and ICC-02/11-02/11-186-Anx.

¹² Joinder Application, para.18.

investigation of specific portions of the case against Mr Blé Goudé and expects to complete those investigations within a short period of time.

10. All information that the Prosecution seeks to obtain in the course of these investigations will, to varying degrees, also be relevant in the case against Mr Gbagbo. However, the Prosecution will not be able to disclose this additional information to Mr Gbagbo by 6 February 2015.
11. Therefore, in order to streamline the evidence and in order to ensure the fair and expeditious conduct of what is likely to be a joint trial, the Prosecution submits that the current disclosure deadline in the Gbagbo case of 6 February 2015 should be suspended until the Chamber has ruled on the Joinder Request. The Trial Chamber should then decide on a new disclosure deadline for the combined case, or for the two separate cases, depending on the Chamber's decision..
12. This approach would facilitate the fair and expeditious conduct of the proceedings as it would allow the Prosecution to rely on the same body of evidence against both accused. Moreover, inconsistency in the evidentiary record in the two cases could lead to inconsistent findings of the Chamber and could delay the proceedings as the Prosecution would need to rely on other evidence to fill any gaps. Finally, a coordinated disclosure deadline would avoid the Prosecution having to file Regulation 35 requests in order to rely at trial on additional evidence collected after 6 February 2015.
13. The suspension of the 6 February 2015 deadline would not result in any undue prejudice to Mr Gbagbo. The Prosecution undertakes to disclose all material in its possession to the Gbagbo Defence by 6 February 2015, as mandated by the Trial Order. Any potential additional material to be disclosed to Mr Gbagbo will not negatively impact on his right under Article 67(1)(b) of the Statute to have adequate time and facilities to prepare his defence because (a) compared to the amount of evidence that has already been disclosed and/or will be disclosed by 6 February 2015, it will be of a limited quantity; and (b) the additional evidence is

likely to merely corroborate other evidence that has already been disclosed to Mr Gbagbo.

Conclusion

14. For the foregoing reasons, the Prosecution respectfully requests the Chamber to suspend the 6 February 2015 deadline by which the Prosecution has to provide full disclosure of all material, of its lists of witnesses, and of its list of evidence to be relied on at trial to the Defence asset in the "Order setting the commencement date for the trial and the time limit for disclosure" until it decides on the Joinder Application.



Fatou Bensouda, Prosecutor

Dated this 19th day of December 2014

At The Hague, The Netherlands