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TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. CHARLES BLÉ GOUDÉ***

Public

Public redacted version of "Prosecution's submissions on agenda items for the status conference of 13 February 2015"

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

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Other

Introduction

1. The Office of the Prosecutor (“Prosecution” or “OTP”) submits its observations on the provisional agenda for the status conference pursuant to Trial Chamber I’s (the “Chamber”) order of 23 January and of 28 January 2015.¹

Confidentiality

2. The Prosecution files this request as confidential since some of the information discussed is not known to the public. A public redacted version will be made available as soon as practicable.

Procedural History

3. On 22 December 2014, the Prosecution requested to join the cases of the *Prosecutor v. Laurent Gbagbo* and the *Prosecutor v. Blé Goudé* (the “Joinder Request”).²
4. On 6 January 2015, the Chamber extended the deadline for the Defence to file its response to the Joinder Request “to 21 days from the notification of the French translation of ICC-02/11-01/11-738 and ICC-02/11-02/11-186.”³
5. On 20⁴ and 21⁵ January 2015, the relevant translations were notified and responses to the Joinder Request are to be filed by 12 February 2015.⁶
6. On 23 January 2015, the Chamber ordered the scheduling of a status conference on 13 February 2015 and instructed the parties and participants to file their observations on the provisional agenda items and indicate whether they wish to add any items by 2 February 2015 (“Scheduling Order”).⁷

¹ ICC-02/11-02/11-200 and ICC-02/11-02/11-201.

² ICC-02/11-02/11-194.

³ ICC-02/11-02/11-197, p. 6.

⁴ ICC-02/11-02/11-186-tFRA.

⁵ ICC-02/11-01/11-738-tFRA.

⁶ Email received from Court Management Services at 13.26.

⁷ ICC-02/11-02/11-200.

7. On 26 January 2015, the Defence filed an urgent request for extension of time to respond to the Joinder Request and an additional 15 to 18 months to prepare for trial (the "First Defence Request").⁸
8. On 28 January 2015, the Chamber ordered that any responses to the extension of time as to the Joinder Request contained in the First Defence Request be filed by 2 February 2015 and any responses to the remainder of the First Defence Request be made in the context of submissions prior to and during the status conference.⁹
9. On 29 January 2015, the Prosecution filed an urgent request for an extension of time to file responses to the First Defence Request, *inter alia*, requesting to file its response to the agenda for the status conference and remainder of the First Defence Request on 9 February 2015 (the "Prosecution Request").¹⁰
10. On 29 January 2015, the Defence filed its "Submissions on 'Order Scheduling a status conference and setting a provisional agenda'", requesting, *inter alia*, the adjournment of the status conference scheduled for 13 February 2015 or alternatively that the issues contained in the First Defence Request be added to the agenda for the status conference (the "Second Defence Request").¹¹
11. On 30 January 2015, the Single Judge granted the Prosecution Request and reminded the parties that it had already decided that the matters raised in the First Defence Request, other than the extension of time to respond to the Joinder Request, were to be addressed prior to and during the status conference.¹²
12. On 6 February 2015, the Trial Chamber rejected the Second Defence Request's application for the adjournment of the status conference.¹³

⁸ ICC-02/11-02/11-201.

⁹ ICC-02/11-02/11-202.

¹⁰ ICC-02/11-02/11-203.

¹¹ ICC-02/11-02/11-204.

¹² ICC-02/11-02/11-205.

¹³ ICC-02/11-02/11-209.

Submissions

The First Defence Request seeking 15 to 18 months for trial preparation should be rejected

13. The Defence fails to show good cause to be allocated 15 to 18 months for trial preparation.
14. The First Defence's Request seeking 15 to 18 more months¹⁴ to prepare for trial is based on the faulty premise that both Lead Counsel and Co-Counsel are newly appointed to the Blé Goudé defence team. The Defence request for an extension of time to respond to the Joinder Request contained in the First Defence Request was based on the same premise. In its 6 February 2015 decision, the Single Judge noted "that Lead Counsel and Co-Counsel have been involved with the Defence team of Blé Goudé for more than four months" and that "[t]heir involvement with the Defence therefore commenced prior to the start of the confirmation of charges hearing." As a result, he found that good cause for the Second Defence Request had not been shown.¹⁵ The same reasoning applies to the First Defence Request.¹⁶
15. Further, the submissions of the Defence to be allocated at least 15 to 18 months to prepare for trial naturally fall under item (f) of the provisional agenda for the status conference, namely the "Commencement date of the trial." Taking into account the Single Judge's ruling¹⁷ and the fact that the Registry has now appointed additional members to the Defence team which is now constituted of seven members,¹⁸ the Defence should make any remaining submissions as to the start date of trial during the discussion of item (f).¹⁹

¹⁴ ICC-02/11-02/11-201, para. 23.

¹⁵ ICC-02/11-02/11-209, para. 11.

¹⁶ ICC-02/11-02/11-209, para. 12.

¹⁷ ICC-02/11-02/11-209.

¹⁸ ICC-02/11-02/11-208.

¹⁹ See *infra* para. 33-34.

Prosecution submissions on the provisional agenda items for the status conference of 13 February 2015

a. Timing, volume and modalities of disclosure of evidence pursuant to rule 76 of the Rules of Procedure and Evidence (“Rules”)

16. The Prosecution is in a position to promptly disclose all currently outstanding material in its possession to Mr. Blé Goudé.

17. To date, the Prosecution has disclosed an extensive body of evidence to the Defence in the Gbagbo case, totalling 7,812 items of evidence. A substantial portion of this evidence has already been disclosed in the Blé Goudé case prior to the confirmation hearing.²⁰

18. Just over 700 incriminating items that were not previously disclosed to the Defence in the Blé Goudé case can be disclosed shortly, assuming that the Chamber adopts a redaction protocol that is identical to the one adopted in the *Gbagbo* case.²¹

Rule 76 material

19. In relation to specific rule 76 material, the Prosecution has disclosed to the Blé Goudé Defence the statements, together with witness-related material, of 69 witnesses currently on the Prosecution’s List of Evidence for trial in the Gbagbo case.²²

20. Material related to a further 31 Prosecution trial witnesses remain to be disclosed. None of these additional witnesses require anonymity [REDACTED].

²⁰ The Prosecution has disclosed close to 6,560 documents to the Blé Goudé defence team prior to the confirmation hearing. While 2,519 items were disclosed under the heading of incriminating evidence, 3,058 items were relied upon on the Prosecution’s List of Evidence for the confirmation proceedings, see ICC-02/11-02/11-124-Conf-Anx3-Corr.

²¹ ICC-02/11-01/11-737-AnxA.

²² ICC-02/11-01/11-759.

Expert witnesses

21. The Prosecution intends to call expert witnesses at trial. One of these witnesses, P-0410 is a medical expert who examined some of the Prosecution witnesses. His testimony will focus on the reports that were drafted as a result of these medical examinations. Witness P-0411 is an expert in ballistics who will be testifying about his Report on the alleged shelling sites in Abidjan,²³ related to the 17 March 2011 incident. The Prosecution also intends to call an expert on the phenomenon of youth groups in the Côte d'Ivoire and their impact on post-electoral violence. The report of this expert is being finalised and will be disclosed as soon as practicable. The Prosecution also refers the Chamber to its Regulation 35 submission of 6 February 2015²⁴ in which it identified further investigative steps currently being finalised such as the identification of bodies using DNA of a number of victims of the 3 and 17 March incidents. The Prosecution foresees that two to three medical experts/pathologists may be called to testify on the results of their external examination, autopsies and another DNA expert if the identification by DNA was to be positive. Finally, the Prosecution is looking into the possibility of calling an expert on another topic.

22. The Prosecution also reminds the Chamber that it is currently conducting further investigations. ²⁵ These post-confirmation investigations are necessary, in particular, to clarify, confirm or corroborate certain aspects of the case, to authenticate a number of previously collected materials, including videos for instance, or to pursue lines of Defence.

b. Whether the Prosecution anticipates issues concerning the protection of witnesses and other persons

23. The Prosecution anticipates that there may be ongoing security risks impacting on its investigations and the protection of witnesses and other persons throughout

²³ CIV-OTP-0049-0048.

²⁴ ICC-02/11-01/11-760-Red2, paras. 26-33.

²⁵ ICC-02/11-01/11-760-Red2, para.5.

the trial. It will continue to monitor its witnesses' security and take appropriate measures and where necessary inform the Chamber pursuant to article 68 of the Rome Statute ("Statute").

Disclosure of identities of witnesses

24. The Prosecution has disclosed the identity of all but three of its witnesses, P-49, P-316 and P-414. Another witness, P-238, was previously anonymous but can now be disclosed pursuant to rule 77. The identity of witnesses P-49 and P-316 can be disclosed as soon as the Chamber clarifies the redaction protocol to be applied.

25. [REDACTED].²⁶ [REDACTED].²⁷ [REDACTED].

26. The Prosecution is now in a position to disclose P-238's identity and statement pursuant to rule 77.²⁸ The witness has requested more time to consider whether he consents to testify in court for the Prosecution. If that is the case, the Prosecution will promptly redisclose his statement as incriminating evidence in order to conform with the e-Court Protocol.

Referrals to the ICC Protection Programme ("ICCP")

27. None of the witnesses the Prosecution intends to rely on for trial are in the ICCPP and there are no such outstanding requests. However, the Prosecution continually assesses the security situation of its witnesses and will inform the Chamber promptly should any change take place.

²⁶ ICC-02/11-02/11-112-Conf-Exp.

²⁷ ICC-02/11-02/11-131-Conf-Red.

²⁸ ICC-02/11-01/11-760-Red2, paras 17-18.

In-court protective measures

28. The Prosecution will seek in-court protective measures for several witnesses, and will submit timely applications.

c. Material already disclosed and intended to be disclosed by the Prosecution pursuant to article 67(2) of the Statute and rule 77 of the Rules

29. The Prosecution is also in a position to promptly disclose to the Accused all currently outstanding article 67(2) and rule 77 materials in its possession which include approximately 15 article 67(2) items and approximately 500 rule 77 items not previously disclosed to the Defence in the Blé Goudé case.

30. The Prosecution will continue its ongoing review of newly collected evidence and of evidence already in its possession for article 67(2) and rule 77 material to ensure timely disclosure. The Prosecution continues to regularly review its evidence collection during the course of the pre-trial and trial phases in order to identify information that may become relevant as the case and as the lines of the Defence evolve or become known. Evidence review and disclosure are therefore not static, but a continuous process.

d. Update on victims' applications

Continued participation of victims approved for participation during confirmation hearing

31. The Prosecution supports a process whereby victims who were authorised to participate during the pre-trial stage are authorised to participate at trial without filing a new application. Charges against the Accused were confirmed in relation to all five charged incidents and crimes against humanity of murder, rape, and other inhumane acts or attempted murder, and persecution.²⁹ Therefore, the

²⁹ ICC-02/11-01/11-656, para. 266.

victims who previously qualified for the status of victims pursuant to rule 85 in the present case should continue to fall within this category for the purposes of trial.

Procedure for allowing new victims to participate at trial

The Prosecution considers that the start of the trial is an appropriate deadline for further applications from victims for participation. This is without prejudice to the right of victims who may later seek to qualify for the purpose of reparations proceedings

e. Languages to be used in the proceedings

32. Based on the languages used during their interview, the majority of Prosecution witnesses will testify in French, with others testifying in Dioula or English.

f. Commencement date of the trial

33. A number of unresolved issues affect the Prosecution's ability to propose a commencement date for the trial. First and foremost, the pending Joinder Request greatly impacts the Prosecution's ability to propose a start day for trial. By way of example, the Prosecution has not yet ascertained a number of practical issues that would arise should the Joinder Request be denied. These include varied issues including, for example, the OTP's potential staffing of two separate Côte d'Ivoire trial teams or the feasibility and impact of asking witnesses to testify in two separate trials. Successful resolution of such issues impacts any potential trial commencement date. Finally, the Prosecution reiterates that limited and focused investigations are ongoing. The Prosecution estimates that these investigations will be concluded in about two months.

34. In the Prosecution's submission, once the decision on Joinder is issued, the parties and participants will be in a more grounded position to propose a trial commencement date.

Conclusion

35. For the reasons set out above and as it will be supplemented orally, the Prosecution submits that the Chamber should reject the Defence's request for 15 to 18 months to prepare for trial.



Fatou Bensouda, Prosecutor

Dated this 9th day of February 2015

At The Hague, The Netherlands