

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15

Date: 4 May 2016

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

**Decision adopting amended and supplemented directions on the 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

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for Mr 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

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

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I ("Chamber") of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* ("Gbagbo and Blé Goudé case"), having regard to Articles 64, 67(1)(b) and (e), 67(3), 68(1) and (3), 69 and 75 of the Rome Statute ("Statute"), Rules 87, 88, 134(3) and 140 of the Rules of Procedure and Evidence ("Rules"), and Regulation 56 of the Regulations of the Court ("Regulations"), issues this "Decision adopting amended and supplemented directions on the conduct of the proceedings".

I. Background

1. On 3 September 2015, the Chamber adopted its "Directions on the conduct of the proceedings" (ICC-02/11-01/15-205: "3 September 2015 Directions").
2. The trial opened on 28 January 2016; since then, five witnesses have appeared before the Chamber and have been questioned by the parties and participants.
3. During the hearings held between 3 February and 18 March 2016, the Chamber and the Presiding Judge issued several rulings related to the conduct of proceedings and to the mode of questioning of the witnesses.
4. Submissions on several issues relating to the conduct of the proceedings, including with a view to enhancing the efficiency and the expeditiousness of the trial, were made by the parties during a status conference held before the Chamber on 26 April 2016.

II. Determinations by the Chamber

5. The 3 September 2015 Directions stated that "as the trial progresses, the Chamber may provide further directions to the parties aimed at improving the efficiency of the presentation of their evidence".
6. Since the opening of the trial, several issues were raised by the parties and consequently several rulings were made by either the Chamber or the Presiding Judge.

7. Furthermore, some of these issues became the subject matter of applications for clarification or for leave to appeal and of responses thereto. The relevant filings are the following:

- a. *“Demande d’autorisation d’interjeter appel de la décision orale du 17 mars 2016 de la Chambre de première instance autorisant le Procureur à procéder au réexamen du témoin P-0625”* (ICC-02/11-01/15-468), filed by the Gbagbo Defence;
- b. “Prosecution’s request to clarify the scope of the Chamber’s oral decision of 17 March 2016 limiting the use of documents in re-examination and in the alternative, leave to appeal the decision” (ICC-02/11-01/15-469-Corr), filed by the Prosecutor;
- c. “Consolidated Response to ICC-02/11-01/15-468 and to ICC-02/11-01/15-469” (ICC-02/11-01/15-472), filed by the OPCV;
- d. *“Réponse de la Défense à la «Prosecution’s request to clarify the scope of the Chamber’s oral decision of 17 March 2016 limiting the use of documents in re-examination and in the alternative, leave to appeal the decision»* (ICC-02/11-01/15-469)” (ICC-02/11-01/15-475), filed by the Gbagbo Defence;
- e. “Prosecution’s response to the Defence for Mr Gbagbo’s application for leave to appeal the oral decision of 17 March 2016 authorising the Prosecution to re-examine Witness P-0625”(ICC-02/11-01/15-476), filed by the Prosecutor;
- f. “Defence request for clarification of the order to provide transcripts and English translations of audio and/or video materials”, submitted by the Blé Goudé Defence by email on 8 April 2016;
- g. *“Demande de clarification concernant ce que recouvre la notion de «pièce versée au dossier»”*, submitted by the Gbagbo Defence (ICC-02/11-01/15-485);

h. "Prosecution Response to Defence «Demande de clarification concernant ce que recouvre la notion de 'pièce versée au dossier», (ICC-02/11-01/15-485)" (ICC-02/11-01/15-488).

8. Finally, the parties have observed that a degree of uncertainty has materialised as regards the relationship between the rulings given by either the Chamber or the Presiding Judge since the opening of the trial and the 3 September 2015 Directions.
9. In light of the above, the Chamber is persuaded that at this stage it is necessary, with a view to preserving the fairness, efficiency and expeditiousness of the proceedings, to adopt a revised text containing the directions on the conduct of the proceedings. The 3 September 2015 Directions are revised, clarified or supplemented as appropriate. The text of these revised directions is contained in Annex A to this decision.
10. Pursuant to Rule 134(3) of the Rules, the Presiding Judge or the Chamber may rule on any issues that arise during the course of the trial, including any modification or additions to the current directions. By their technical nature and their being directly instrumental to the fundamental need to ensure the fair and expeditious conduct of the trial, directions are subject to modification, including in light of actual developments. Such developments are inherent in the nature of a trial and, as such, not predictable in advance. Accordingly, the parties must be ready to expect and welcome such changes and to promptly adapt to them with a view to contributing to the overall fairness and expeditiousness of the proceedings. In shaping the revised text of the directions, the Chamber has considered the submissions made by the parties both in the filings listed in paragraph 7 above and during the status conference held on 26 April 2016 and has deliberately refrained from restating what is explicitly provided for in the applicable law pursuant to Article 21 of the Statute. The directions thus supplement or assist in the interpretation and application of the legal framework where necessary. In the same vein, the Chamber has deliberately omitted to rule in relation to phases of the proceedings which have been in the meantime completed.

11. The main principles upon which the revised directions rely on are the following: (i) the accused's right to be tried without undue delay and the subsequent need to maximise the efficiency of time spent in the courtroom, pursuant to Articles 64(2) and Article 67(1)(c) of the Statute; (ii) the Chamber's statutory mandate to ascertain the truth pursuant to Article 69(3) of the Statute, which makes it unnecessary to refer to the case as being either "the Prosecutor's" or "the Defence's"; (iii) the applicable law pursuant to Article 21 of the Statute, which creates a unique criminal procedure, independent and distinct from any other national or international jurisdiction; (iv) the fact that, although the parties are entitled to a degree of deference in the selection and presentation of their evidence, their discretion is not unlimited and is subject to the Chamber's and the Presiding Judge's trial management powers pursuant to Article 64 of the Statute.
12. In this perspective, the Chamber recalls that the Prosecutor undertook to reduce the number of witnesses and items of evidence where possible prior to the commencement of the trial following discussions with the defence (ICC-02/11-01/15-114). No such reduction has been announced so far. As said, the Prosecutor's discretion as to the presentation of her evidence is subject to the Chamber's trial management powers. In particular, the Chamber emphasises its power to identify issues critically relevant to its determination of the charges and to instruct the parties to prioritise and bring forward evidence relating to such issues first, subject to adequate notice, and particularly the rights of the Defence pursuant to Article 67(1)(b) of the Statute.
13. As regards the issue of legal representation of victims, the Chamber reiterates that the system established pursuant to decisions taken at the pre-trial stage in both the Gbagbo and the Blé Goudé cases, as reviewed by the Chamber prior to the opening of the trial, meets all of the requirements for effective and fair representation of victims, and shall therefore be maintained throughout the trial proceedings.
14. The Chamber decides that the text of these revised directions, as contained in Annex A to this decision, shall replace and supersede the 3 September 2015 Directions in

their entirety, as well as previous oral rulings of the Chamber departing from their content.

15. As a consequence of the adoption of the new directions, the applications and requests listed in paragraph 7 above are now to be dismissed as moot, as they either refer to the interpretation and implementation of directions no longer in force (ICC-02/11-01/15-469-Corr) or to issues which are addressed in the revised directions herewith adopted for the first time (“Defence request for clarification of the order to provide transcripts and English translations of audio and/or video materials”, submitted by the Blé Goudé Defence; ICC-02/11-01/15-485).
16. As regards the “*Demande d’autorisation d’interjeter appel de la décision orale du 17 mars 2016 de la Chambre de première instance autorisant le Procureur à procéder au réexamen du témoin P-0625*” (ICC-02/11-01/15-468), submitted by the Defence for Mr Gbagbo, the Chamber takes the view that, whilst apparently challenging the Chamber’s specific decision to allow the Prosecutor to re-question Witness P-625, the application is premised on a misinterpretation of the Chamber’s decision (and, more generally, of the Chamber’s approach), at least as regards the three following aspects: (i) the Chamber limited but did not abolish the possibility to re-question a witness; (ii) it is not accurate to state that, by expressing its preference to refrain from using terminology not contained in the statutory texts of the Court (such as “cross-examination”), the Chamber meant to entirely assimilate the questioning by the calling party to the questioning of the non-calling party, and even less to prevent the non-calling party from questioning the credibility of the witness; (iii), leading questions may be (and have been) allowed if deemed conducive to the determination of the truth. Since the amended directions deal with the aforesaid issues (and, more specifically, clarify the extent to which re-questioning and leading questions are permitted), this application is also to be dismissed as moot.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

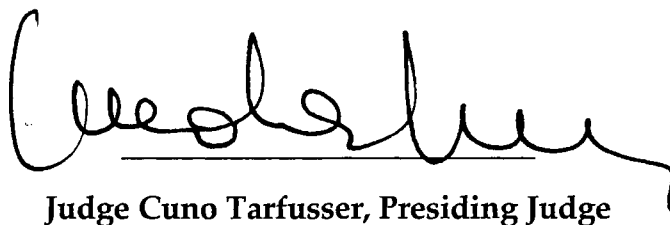
DECIDES to adopt the revised "Directions on the conduct of the proceedings" contained in Annex A to this decision;

DECIDES that the revised directions shall supersede the 3 September 2015 Directions in their entirety;

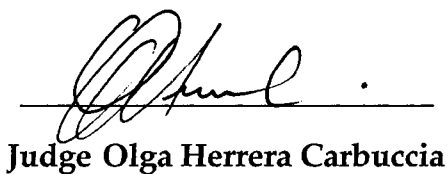
DISMISSES as moot the following applications and requests: ICC-02/11-01/15-468; ICC-02/11-01/15-469; ICC-02/11-01/15-485; the Blé Goudé's "Defence request for clarification of the order to provide transcripts and English translations of audio and/or video materials" and all related filings, as listed in paragraph 7 above.

Judge Geoffrey Henderson appends a Separate Opinion.

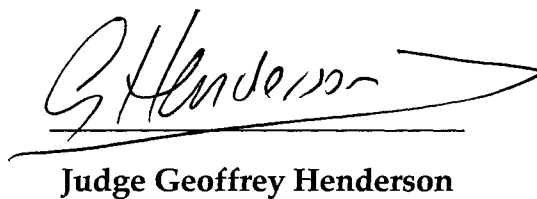
Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser, Presiding Judge

A handwritten signature in black ink, appearing to read 'Olga Herrera Carbuccion', written over a horizontal line.

Judge Olga Herrera Carbuccion

A handwritten signature in black ink, appearing to read 'G. Henderson', written over a horizontal line.

Judge Geoffrey Henderson

Dated 4 May 2016

At The Hague, The Netherlands