

**Cour
Pénale
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**International
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Date: **9 January 2015**

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. LAURENT GBAGBO***

Public Document

**Defence response to the "Prosecution's Request for Partial Suspension of the
'Order setting the commencement date for the trial and the time limit for
disclosure'" (ICC-02/11-01/11-741)**

Source: Defence team for Laurent Gbagbo

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

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I. Procedural history

1. On 12 June 2014, two of the Judges of Pre-Trial Chamber I confirmed the charges against Laurent Gbagbo¹ whereas, in a dissenting opinion, Judge Van den Wyngaert stated: “I am not convinced that the evidence in the record suffices to commit Laurent Gbagbo to trial for the charges under article 25(3)(a), (b) and (d)”.

2. On 17 September 2014, the Presidency referred the case of *The Prosecutor v. Laurent Gbagbo* to Trial Chamber I.²

3. On 8 October 2014, the Trial Chamber scheduled the first status conference for 4 November 2014.³

4. On 27 October 2014, the Prosecution,⁴ the Legal Representative of victims,⁵ the Defence⁶ and the Registry⁷ filed written submissions on the agenda of the status conference.

5. On 4 November 2014, the first status conference was held before Trial Chamber I.⁸

6. On 17 November 2014, the Trial Chamber set the commencement date for the trial for 7 July 2015 and directed “the Prosecution to disclose to the Defence all Rule 76 and Rule 77 material on a rolling basis, to disclose all Article 67(2) material as soon as

¹ ICC-02/11-01/11-656-Conf.

² ICC-02/11-01/11-682.

³ ICC-02/11-01/11-692.

⁴ ICC-02/11-01/11-708.

⁵ ICC-02/11-01/11-706.

⁶ ICC-02/11-01/11-709-Exp.

⁷ ICC-02/11-01/11-705.

⁸ ICC-02/11-01/11-T-25-CONF-FRA.

practicable, and in any event to provide full disclosure of all material to the Defence no later than 6 February 2015".⁹ It further directed the Prosecution to provide to the Defence by 6 February 2015 "its list of witnesses and list of evidence to be relied on at trial, and to disclose the reports of any expert witnesses to be called by the Prosecution".¹⁰

7. On 27 November 2014, the Single Judge scheduled a second status conference for 4 December 2014.¹¹

8. On 4 December 2014, a second status conference was held.¹²

9. On 11 December 2014, the Judges of the Pre-Trial Chamber confirmed the charges against Charles Blé Goudé.¹³

10. On 16 December 2014, the Prosecution filed a request to join the *Gbagbo* and *Blé Goudé* cases.¹⁴

11. On 19 December 2014 the Prosecution filed its "Request for Partial Suspension of the 'Order setting the commencement date for the trial and the time limit for disclosure'".¹⁵

⁹ ICC-02/11-01/11-723, para. 10.

¹⁰ *Idem.*

¹¹ ICC-02/11-01/11-730.

¹² ICC-02/11-01/11-T-27-CONF-FRA.

¹³ ICC-02/11-02/11-186.

¹⁴ ICC-02/11-01/11-738.

¹⁵ ICC-02/11-01/11-741.

II. Discussion

12. On 19 December 2014, the Prosecution requested the Chamber to partially suspend¹⁶ the order setting the commencement date of the trial for 7 July 2015 and 6 February 2015 as the deadline¹⁷ by which the Prosecution was to have provided full disclosure of its material, its list of witnesses and its list of evidence to the Defence.¹⁸ It sought leave to not disclose all of these items until after the Chamber decided on its application to join the *Gbagbo* and *Blé Goudé* cases.¹⁹

Introduction

13. Before discussion of the Prosecution's position, four points should be noted:
- First, the Prosecution's Request is more than merely a request to "suspend the discrete portion" of the order – it is a challenge to the spirit of the Chamber's decision. The Bench set the dates with a view to striking a balance between the expeditiousness of the proceedings and respect of the rights of the defence.
 - Second, the Prosecution relies on article 64(3)(a) of the Statute, which allows a Chamber to suspend the execution of certain decisions if it is necessary "to facilitate the fair and expeditious conduct of the proceedings". However, if granted, the Request would not lead to "suspending" execution of the Order, but would alter its logic and betray its spirit; in addition it would slow down the proceedings and undermine their fairness.
 - Third, no decision on a potential joinder will be made before March 2015. Even if, immediately following the decision, the Prosecution were to give the Defence the body of evidence which it is supposed to disclose to it, that would still leave

¹⁶ *Idem*.

¹⁷ ICC-02/11-01/11-723.

¹⁸ *Ibid.*, para. 10.

¹⁹ ICC-02/11-01/11-741, para. 14.

the Defence barely three months to examine hundreds of new documents and testimonies and to prepare cross-examinations, which is not reasonable.

- Fourth and final point, it seems as though the Prosecution is in fact trying to buy time because, contrary to its repeated assertions,²⁰ it does not appear to be ready.²¹

14. The alternatives are clear:

1. The Prosecution is indeed ready as regards the *Gbagbo* case, as it has repeatedly asserted, in which case the schedule should be set accordingly, as the Chamber did on 17 November 2014, even if that means reassessing the situation following any decision on the joinder. The Prosecution's Request must accordingly be rejected because it would upset the balance struck by the Bench in their Order of 17 November 2014 and would violate the rights of the defence insofar as the Defence would then have only three months and not the five months it was afforded to prepare; or
2. The Prosecution is not ready, as can be deduced from its Request, in which case the commencement date of the trial should be calculated in accordance with the five-month period determined by the Bench, starting from the date on which the Prosecutor transmits the body of its evidence to the Defence.

15. In no case can the reasoning be based on the Chamber's hypothetical decision. It must be based on the situation as it stands.

16. Furthermore, even if the Bench were to consider it helpful to provide the Prosecution with additional time – corresponding to the time taken from now until the decision on the joinder – it should then, in order to respect the rights of the defence

²⁰ ICC-02/11-01/11-T-25-CONF-FRA, p. 14, lines 14-16; ICC-02/11-01/11-T-27-CONF-FRA, p. 4, lines 21-23 and p. 6, line 27; ICC-02/11-01/11-T-25-CONF-ENG CT p. 67, line 7.

²¹ ICC-02/11-02/11-T-4-Red-FRA, p. 5, lines 16-21; ICC-02/11-01/11-T-25-CONF-FRA, p. 10, lines 9-10; ICC-02/11-01/11-741, para. 9.

and allow for proper preparation of the case, postpone the actual commencement date of the trial by as many additional months as are afforded the Prosecution (regardless of a possible joinder or the lengths of time for which the Order is suspended) to allow it to disclose the body of its evidence, so that the Defence – as laid down in the Order of 17 November 2014 – would still have five months to prepare **after** the Prosecution discloses the body of its evidence.

1. Rejection of the Prosecution's Request

1.1 The nature of the Prosecution's Request

17. The content of the Order of 17 November is clear: the Bench set the actual commencement of the trial for 7 July 2015 and set 6 February 2015 as the deadline by which the Prosecution must disclose the body of evidence necessary for the Defence's preparation because, having considered the duration of the pre-trial proceedings and taken into account the need for an expeditious trial, it considered that a period of five months from the date on which the Prosecution discloses its body of evidence to the actual commencement of the trial would ensure that the Accused has "adequate time and facilities for the preparation of the defence".

18. The Defence had indicated that – bearing in mind the complexity of the case, the considerable volume of documents exchanged and the large number of witnesses to be called by the Prosecution (approximately 100) – it would need at least five months to prepare.

19. By requesting a suspension of the deadline (which, in fact, is tantamount to allowing the Prosecution more time) without rescheduling the actual commencement date of the trial, the Prosecution is effectively requesting that the time allotted to the Defence be reduced. The Prosecution is thus calling into question both the

organisation of the pre-trial phase as decided by the Bench and the balance between the expeditiousness of the proceedings and respect of the rights of the Defence which was struck by the Bench in their decision.²²

20. Had the Prosecution sought a suspension proper, it would have taken into account the time needed for the Defence's preparation as determined by the Bench (i.e. five months) to respect the overall balance on which the Decision of 17 November 2014 was based. The Prosecution should, therefore, have requested the suspension of all deadlines and not merely the disclosure deadline set for 6 February 2015. Above all, it should have requested that the actual commencement date of the trial be postponed by as much time as it was requesting in addition.

21. As things stand, its Request for "suspension" can be interpreted, realistically, as a request for extending the time limit by which it must disclose to the Defence all documents needed for the latter to begin preparing its cross-examinations.

22. This Request is, above all, an attempt to revisit the Order, in which the Chamber clearly specified that the dates 6 February and 7 July 2015 had been chosen having taken into consideration the length of the pre-trial proceedings and the fact that the Prosecution had had all the time it needed:

The Chamber has taken into consideration that the warrant of arrest was issued in this case in November 2011, the confirmation of charges hearing took place in February 2013, and a decision was rendered thereon in June 2014, providing the Prosecution additional time for any further investigations before the start of trial.²³

²² ICC-02/11-01/11-723, para. 9.

²³ *Idem*.

1.2 The serious repercussions for the Defence of a “suspension” – and the resulting extension of the time limit granted to the Prosecution – unless the actual commencement date of the trial is postponed

1.2.1 The Defence requires time

1.2.1.1 The case is particularly complex

23. It should be recalled that the *Gbagbo* case is particularly complex as it involves determining responsibility in a civil war that lasted nearly 10 years and which came to a head during the post-electoral crisis, pitting against one another government forces, a rebel army of mercenaries in the north of the country, armed groups that had infiltrated Abidjan, French Licorne forces, UNOCI troops, etc.²⁴

24. This case is also particularly complex in that:

- The Prosecution is focusing on numerous incidents that took place in various parts of Abidjan and the surrounding areas at different times;
- Nearly 700 submissions were exchanged during the confirmation of charges phase; and
- Lastly, the parties are relying on more than 7,000 items of material (6,492 for the Prosecution and 1,028 for the Defence), or approximately 39 105 pages of text and 203 hours and 35 minutes of video.

25. Furthermore, the Prosecution has repeatedly noted the complexity of the case,²⁵ as has the Single Judge.²⁶

²⁴ ICC-02/11-01/11-709-Conf-Exp, paras. 42-44.

²⁵ ICC-02/11-01/11-579, para. 5.

²⁶ ICC-02/11-01/11-582, para. 5; ICC-02/11-01/11-709-Conf-Exp, para. 47.

1.2.1.2 *As a result, considerable work is involved in the preparation of the trial and the cross-examinations*

26. In view of the 6,220 documents disclosed by the Prosecution – totalling 32 863 pages of text and 107 hours, 45 minutes and 38 seconds of audio and video material – along with the 1,073 documents the Prosecution has stated it still intends to disclose,²⁷ it would require 10 000 hours to read or reread them in the light of the body of evidence and the decision confirming the charges, to analyse them, cross-check them and use them for the preparation of cross-examinations. Not to mention that the Prosecution has indicated it was in the process of reviewing all of its material, in particular rule 77 material or potentially exonerating information, to re-disclose it to the Defence as incriminating evidence.²⁸

27. The Defence should therefore be allowed the time it needs to analyse, verify and research the plethora of documents disclosed by the Prosecutor. The better the Defence is able to prepare, the more informed the Bench will be. It is a matter of the proper administration of justice.

1.2.1.3 *The number of witnesses is particularly large*

28. During the status conference of 4 November 2014, the Prosecution indicated: “we foresee that potentially at trial we could have as many as between 80 to 100 witnesses (...) the number is astronomical for this institution”.²⁹ Therefore, the investigation needed for preparing the cross-examination of these witnesses will be particularly long and arduous.

²⁷ ICC-02/11-01/11-T-25-CONF-FRA, pp. 13-14, lines 23-3 and ICC-02/11-01/11-T-25-CONF-FRA, p. 29, lines 24-25; ICC-02/11-01/11-T-25-CONF-FRA, p. 31, lines 2-26.

²⁸ ICC-02/11-01/11-T-25-CONF-FRA, pp. 29-30, lines 28-4.

²⁹ ICC-02/11-01/11-T-25-CONF-ENG, p. 9, lines 7-9.

29. The greater the number of Prosecution witnesses and the more they address questions of facts that require in-depth research, the more time the Defence will require to prepare its cross-examinations and the longer the commencement date for the trial will have to be postponed.

30. Much of the Defence's work is taken up with the detailed preparation of the cross-examination of each Prosecution witness on the basis of all of the available evidence and documents. This task is all the more laborious in that many of the Prosecution witnesses have made very long statements in which they address numerous factual matters. The preparation for cross-examining a single witness therefore requires a specific type of work, which takes several days at the very least and is based on investigations entailing a thorough analysis of all the matters addressed by the witness in question, which in turn must be cross-checked against the statements of all other witnesses.

31. It is for this reason, as emphasised by the Defence in its submissions of 27 October 2014 and 4 November 2014, that the Prosecution must disclose as soon as possible the identities of witnesses whose testimony it intends to use and whom it intends to call so that the Defence can verify their credibility and analyse their statements to prepare the cross-examinations.³⁰

32. Given the case's complexity and the amount of documentary evidence already disclosed – the considerable amount of documentary evidence already disclosed and which the Prosecution intends to disclose – and the number of witnesses the Prosecution intends to call, the Prosecution's list of evidence and its list of witnesses

³⁰ ICC-02/11-01/11-709-Conf-Exp, para. 26; ICC-02/11-01/11-T-25-CONF-FRA, p. 20, lines 13-25.

must be communicated to the Defence at least five months before the commencement of the trial.³¹

1.2.2 *The Bench took the Defence's needs into consideration in the Order of 17 November 2014*

33. In the Order of 17 November 2014, the Bench indicated that

The Chamber is mindful of its obligations under the Statute to ensure that the accused is tried without undue delay and that the trial is fair and expeditious. However, a balance must be struck between this obligation and the Chamber's duty to ensure the accused has adequate time and facilities for the preparation of his defence.³²

1.2.3 *Consequences regarding the fairness of the proceedings*

34. To grant the Prosecutor's Request as it stands would result in drastically reducing the time provided to the Defence to prepare its case. Unless the actual commencement date of the trial is postponed, the Defence would have only three months or so (from March 2015) to analyse the body of the Prosecution's evidence, conduct the necessary investigations and prepare cross-examinations.

35. It is important to recall that the preparation can be effective and efficient only if it concerns the entire body of evidence transmitted by the Prosecution.

36. The Defence must have an overview of the Prosecution's evidence³³ and, in particular, of all the witnesses to be called by the Prosecution and of the nature of their testimony in order to be able to conduct rapid, efficient investigations.

³¹ ICC-02/11-01/11-709-Conf-Exp, para. 38.

³² ICC-02/11-01/11-723, para. 9.

³³ ICC-02/11-01/11-T-27-CONF-FRA, p. 10, lines 13-22.

37. If the Defence has only a fragmented view of the Prosecution's evidence, the investigations conducted based on the first testimonies disclosed could be called into question with the subsequent disclosure of other testimonies and might have to be redone.³⁴

38. As long as the Defence does not have knowledge of the full body of the Prosecution's evidence, it cannot effectively carry out its investigations as the material on which they are based could be reinterpreted and need to be analysed differently in the light of material that the Prosecution might disclose at a later date.³⁵

39. To grant the Prosecution's Request would be to require the Defence to restart all of its preparation after March 2015 in the light of the plethora of documents that the Prosecution indicates it intends to disclose to the Defence following the decision on the joinder;³⁶ i.e. the second half of March 2015 would be the best-case scenario.

40. The amount of time granted to the Defence between the Prosecution's last disclosure and the actual commencement date of the trial is currently five months, and this cannot be further reduced or the Defence will not have the necessary time to prepare Laurent Gbagbo's defence.³⁷

41. If the deadlines for the Prosecution were to be "suspended", then the actual commencement date of the trial should also be postponed.³⁸

³⁴ *Idem.*

³⁵ *Idem.*

³⁶ ICC-02/11-01/11-741, paras. 9, 10 and 14.

³⁷ ICC-02/11-01/11-T-27-CONF-FRA, pp. 11-12, lines 26-8.

³⁸ "The Chamber notes in this regard the very recent disclosure of screening notes and the fact that the identity of Witness 534 is still unknown to the Defence. Also of significance to the determination of a new trial date is the fact that, in the present decision, the Prosecution is authorised to add to its witness list two witnesses whose identities are not yet known to the Defence. Given these considerations, the Chamber concludes that it is appropriate to grant the Defence additional time

1.3 The premise on which the Prosecutor's argument is founded

42. The Prosecution's argument is based on the premise that the *Gbagbo* and *Blé Goudé* cases will be joined. From the Defence's point of view, this is not a valid basis for an argument because it relies on hypothesis. The question is whether at present, before any decision is made, the Prosecution is ready in the *Gbagbo* case. This is all the more relevant given that, in setting their schedule, the Bench "[took] into consideration" in their Order of 17 November 2014,

that the warrant of arrest was issued in this case in November 2011, the confirmation of charges hearing took place in February 2013, and a decision was rendered thereon in June 2014, providing the Prosecution additional time for any further investigations before the start of trial.³⁹

In other words, the Prosecution had the time it needed.

43. Furthermore, the Prosecution has reiterated its readiness several times. For example, during the status conference of 4 November 2014, it stated that "if the Chamber was to set a deadline three months [...] we would be ready by then".⁴⁰ During the status conference of 4 December 2014, the Prosecution stated "that is all on schedule indeed so far".⁴¹

44. In these circumstances, extending the time limit beyond 6 February 2015 – albeit in the form of a "suspension" – is unjustified and the Prosecution's Request must be dismissed.

to prepare for trial" (ICC-01/09-01/11-762, para. 92); ICC-02/11-01/11-T-27-CONF-FRA, pp. 11-12, lines 26-8.

³⁹ ICC-02/11-01/11-723, para. 9.

⁴⁰ ICC-02/11-01/11-T-25-CONF-ENG, p. 13, lines 12-13.

⁴¹ ICC-02/11-01/11-T-27-CONF-ENG, p. 6, line 18.

2. In the alternative, respect for the five-month time frame granted to the Defence for its preparation and the ensuing postponement of the actual commencement date of the trial

2.1 The Prosecution does not seem ready

45. The Prosecution indicates that “the investigations in the two cases are at somewhat different stages. The Prosecution is continuing its investigation of specific portions of the case against Mr Blé Goudé.”⁴² It adds that “[a]ll 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.**”⁴³

46. However, given that the Prosecution has incessantly explained that it is treating the two cases as one⁴⁴ (“The cases against Mr Gbagbo and Mr Blé Goudé are essentially one and the same.”⁴⁵), it appears as if, in reality, the Prosecution continues to

⁴² ICC-02/11-01/11-741, para. 9.

⁴³ *Ibid.*, para. 10.

⁴⁴ On 1 May 2014, during the first status conference held in the case of *The Prosecutor v. Charles Blé Goudé* in the pre-trial stage, the Prosecution indicated that, “**What is incriminating in relation to Mr Gbagbo will be incriminating in relation to Mr Blé Goudé.**” The same for Rule 77 and potentially exonerating information.” (ICC-02/11-02/11-T-4-Red-ENG, p. 4, lines 10-12). On 30 May 2014, the Prosecution sought leave from the Pre-Trial Chamber in *Gbagbo* to transmit to the Defence for Charles Blé Goudé items disclosed by the Defence for Laurent Gbagbo, considering that “[t]he cases of GBAGBO and BLÉ GOUDÉ are closely related” and “[c]onsequently all material disclosed by Defence Counsel is material that should be disclosed to the Defence in the BLÉ GOUDÉ case pursuant to Article 67(2) or Rule 77” (ICC-02/11-01/11-652, para. 3). On 16 December 2014, in the “Prosecution’s Request to join the cases of *The Prosecutor v. Laurent GBAGBO* and *The Prosecutor v. Charles BLÉ GOUDÉ*”, the Prosecution considered that “The cases against Mr Gbagbo and Mr Blé Goudé are essentially one and the same.” (ICC-02/11-01/11-738, para. 10). On 19 December 2014, in the “Prosecution’s Request for Partial Suspension of the ‘Order setting the commencement date for the trial and the time limit for disclosure’”, the Prosecution recalled that “[t]he cases against Mr Gbagbo and Mr Blé Goudé are essentially one and the same.” (ICC-02/11-01/11-741, paras. 8-9).

⁴⁵ ICC-02/11-01/11-738, para. 10.

investigate the *Gbagbo* case,⁴⁶ as it acknowledged on 4 November 2014: “Our investigations are ongoing in this case, but also in relation to the Blé Goudé side of the case”.⁴⁷

47. The Defence is of the view that the Bench should put an end to these interminable investigations as they are jeopardising the Defence’s work. How can the Defence prepare if the Prosecution is incessantly conducting investigations and, as a result, the allegations are likely to change? The Prosecution has been conducting investigations since May 2011⁴⁸ (on 19 May 2011, the Prosecution informed the President of the Court of its intention to seek leave to open investigations into the situation in the Côte d’Ivoire;⁴⁹ on 23 June 2011, it sought leave from Pre-Trial Chamber III to open an investigation⁵⁰), i.e. for nearly four years, without taking into account that the situation has been under preliminary examination by the Prosecution since 2003.⁵¹

48. It would be wrong to penalise the Accused, by limiting his ability to defend himself, for delays that are not his fault.

⁴⁶ “The Prosecution also informs the Chamber that it is currently conducting confined further investigations.” (“Prosecution’s Submissions on the Provisional Agenda for the 4 November 2014 Status Conference”, 27 October 2014, ICC-02/11-01/11-708, para. 9); “Our investigations are ongoing in this case, but also in relation to the Blé Goudé side of the case” (ICC-02/11-01/11-T-25-CONF-ENG, p. 9, lines 6-7); “So [...] we’ll investigate as much as we can until the end” (ICC-02/11-01/11-T-25-CONF-ENG, p. 13, line 25, p. 14, line 1); “And while – you know, we’re still investigating.” (ICC-02/11-01/11-T-25-CONF-ENG, p. 31, line 2); “But the bottom line is that while the Prosecution’s investigations may be ongoing” (ICC-02/11-01/11-T-25-CONF-ENG, p. 67, lines 5-7); “Since our last status conference and as mentioned, our investigations are ongoing” (ICC-02/11-01/11-T-27-CONF-ENG, p. 4, lines 17-19); “What I’d like to add for the Chamber’s knowledge is, while we are currently on track in relation or on schedule in relation to the documents in our possession, investigations in the field are actively continuing and including interviews that lead to the request of transcriptions” (ICC-02/11-01/11-T-27-CONF-ENG, p. 5, lines 23-25, p. 6, line 1).

⁴⁷ ICC-02/11-01/11-T-25-CONF-ENG, p. 9, lines 6-7.

⁴⁸ ICC-02/11-1-Anx; ICC-02/11-3; ICC-02/11-14.

⁴⁹ ICC-02/11-1-Anx.

⁵⁰ ICC-02/11-3.

⁵¹ ICC-02/11-3, para. 15.

2.2 The indispensable five months of preparation granted to the Defence by the Bench

49. If the Chamber were to consider it appropriate to await the decision of a potential joinder, which is to say, in fact, to grant the Prosecution additional weeks or months for disclosing to the Defence the body of its evidence, its list of witnesses and, more generally, all of its material, in that case it should postpone the actual commencement date of the trial by the same number of weeks or months that it provided in addition to the Prosecution.

50. The five months granted for its preparation to the Defence by the Bench in its Order of 17 November 2014⁵² is a minimum.

51. It would be quite impossible – given the complexity of the case, the volume of evidence exchanged and the number of witnesses called by the Prosecution – for the Defence to be materially ready in under five months (see above).

52. This time frame cannot be reduced.

53. Most importantly, this time frame necessarily begins with disclosure to the Defence of the entire body of the Prosecution's evidence.

54. The Defence must be able to assess the evidence communicated by the Prosecution as a whole.

55. As long as the Defence does not have knowledge of the entire body of the Prosecution's evidence, it cannot carry out investigations effectively because the

⁵² ICC-02/11-01/11-723.

evidence upon which it will rely could be reinterpreted differently at a later time in the light of evidence that the Prosecution discloses in March 2015.⁵³

56. As emphasised by the Defence during the status conference of 4 December 2014:

[TRANSLATION] The one thing that is fundamental for us is to know the content of the statements made by the witnesses that the Prosecution intends to call and any other useful information so that we can examine, analyse and cross-check those statements. In order to cross-check the contents and accuracy of the witness's account and the credibility of the witness, we will need to compare all the Prosecution witnesses' testimonies and also assess them in the light of the testimonies and documents obtained by the Defence. The failure to disclose even a single testimony to the Defence could jeopardise the Defence's investigations.⁵⁴

57. The amount of time granted to the Defence between the Prosecution's last disclosure and the commencement of the trial is today set at five months, and cannot be further reduced or the Defence would not have at its disposal the time it needs to prepare Laurent Gbagbo's defence.⁵⁵

2.3 The actual commencement date of the trial

58. The five-month time frame that the Chamber granted the Defence to investigate and prepare the cross-examinations has to be calculated on the basis of the Prosecutor's disclosure of the body of its evidence, in particular, its list of witnesses.⁵⁶

59. If the Prosecutor's deadline were to be "suspended", it would then be appropriate to postpone the actual commencement date of the trial.⁵⁷

⁵³ ICC-02/11-01/11-T-27-CONF-FRA, p. 10, lines 13-22.

⁵⁴ ICC-02/11-01/11-T-27-CONF-FRA, p. 10, lines 13-26.

⁵⁵ ICC-02/11-01/11-T-27-CONF-FRA, pp. 11-12, lines 26-8.

⁵⁶ ICC-02/11-01/11-T-27-CONF-FRA, pp. 12, lines 2-8.

⁵⁷ ICC-01/09-01/11-762, para. 92; ICC-02/11-01/11-T-27-CONF-FRA, pp. 11-12, lines 26-8.

2.4 The consequences of a potential joinder

60. A decision joining the cases would – to the extent that it would give a different “complexion” to the two cases, the one thenceforth being “permeated” by the other – lead to a different perception of either case and a modification of the strategies followed by each of the Defence teams.

61. As a result, for both of the Defence teams a joinder would lead to additional work – and different work from what would have been done in its absence. A joinder would lead to an increase in workload for the parties given that they would have to manage two cases at the same time.

62. Whatever the case, the suspension of deadlines precludes the actual commencement date of the trial from already being set because, in the event of a joinder, this date should not be set until after the position of each party has been assessed.

FOR THESE REASONS, MAY IT PLEASE TRIAL CHAMBER I:

Noting articles 21(3), 64(2) and (3)(a), and 67(1)(b) of the Rome Statute, rule 101 of the Rules of Procedure and Evidence and regulation 35 of the Regulations of the Court,

As principal request, to

- **Dismiss** the “Prosecution’s Request for Partial Suspension of the ‘Order setting the commencement date for the trial and the time limit for disclosure’” (ICC-02/11-01/11-741);

In the alternative, to

- **Suspend** the effects of the “Order setting the commencement date for the trial and the time limit for disclosure” (ICC-02/11-01/11-723) and, in particular, suspend the application of the deadlines established by that Order;
- **Note** that, pursuant to the Order of 17 November 2014, the Defence must have five months **starting from** the Prosecution’s disclosure of the entire body of its evidence, in particular, the disclosure of its list of witnesses and its definitive list of evidence, in order to effectively prepare in accordance with the provisions of article 67 of the Statute;
- **Decide** that the dates set by the Order, namely those of 6 February and 7 July 2015, are now null and void, and that other dates will be set in due course.

[signed]

Emmanuel Altit

Lead Counsel for Laurent Gbagbo

Dated this 9 January 2015

At The Hague, the Netherlands