

Hearing

(Open Session)

ICC-02/11-01/15

1 International Criminal Court
2 Trial Chamber I - Courtroom 1
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Geoffrey Henderson, Judge Olga Herrera Carbuccion and
7 Judge Bertram Schmitt
8 Hearing
9 Tuesday, 10 November 2015
10 (The hearing starts in open session at 2.29 p.m.)
11 THE COURT USHER: All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE HENDERSON: Good afternoon, everyone. The hearing is open.
15 Would the court officer please call this case.
16 THE COURT OFFICER: Good afternoon. Yes, Mr President. The situation in the Republic
17 of Côte d'Ivoire in the case of the Prosecutor versus Laurent Gbagbo and Charles Blé Goudé,
18 in the case reference ICC-02/11-01/15.
19 And for the record, we are in open session.
20 PRESIDING JUDGE HENDERSON: Thank you. All right. Just for the record, counsel,
21 would you please introduce yourself for the record, Mr Prosecutor.
22 MR MACDONALD: Good afternoon, your Honours. The Prosecution is represented today
23 by Mrs Henderson, Mandavia, Garcia and Krummenacher.
24 PRESIDING JUDGE HENDERSON: Thank you.
25 For the Gbagbo Defence, Mr Altit.

1 MR ALTIT: (Interpretation) Good afternoon, your Honours. With me today is Professor
2 Jacobs, Ms Noémie, Ms Le Guennec and myself, I am Emmanuel Altit, counsel for
3 Mr Gbagbo.

4 PRESIDING JUDGE HENDERSON: Thank you.
5 For Mr Blé Goudé.

6 MR KNOOPS: Good afternoon, your Honours. I'm escorted today by co-counsel, Mr
7 Claver N'Dry; one of our case managers, Madam Phoebe Oyugi. Merci.

8 PRESIDING JUDGE HENDERSON: I thank you. The Legal Representative for the Victims.

9 MS MASSIDDA: Good afternoon, Mr President, your Honours. Appearing for victims
10 today, Mr Enrique Carnero-Rojo, Ms Ludovica Vetruccio, Mr Patrick Tchidimbo, and I am
11 Paolina Massidda, principal counsel.

12 PRESIDING JUDGE HENDERSON: All right. Do we have anybody from the Registry here
13 today? Very well. Thank you.

14 I shall now proceed. This hearing will take place over, as just a matter of
15 housekeeping, over three days. Today the Chamber will deliver its oral rulings in
16 open court. And for this, this session will take place between 14.30 and 16.30. I
17 really do not anticipate that we should take more than one session for that.

18 On 12 November, which is Thursday, the Chamber will call Dr Lamothe and Dr
19 Ludes. The courtroom is reserved for a normal sitting schedule of three
20 one-and-a-half-hour sessions beginning at 9.30.

21 On the 19th of November, the Chamber will then call Dr -- I beg your pardon -- Mr
22 Dumez. This means that the hearings previously scheduled for 18 November are
23 now rescheduled for the 19th specifically due to Dr Dumez's availability that day and
24 in order to facilitate the Gbagbo Defence request.

25 The courtroom will be reserved for a normal sitting schedule of three

1 one-and-one-half-hour sessions starting from 9.30.

2 After the testimony of Mr Dumez, the Court will hear final oral submissions. And
3 just by way of some other organizational matters, the Chamber informs the parties
4 and the participants that it intends to hold -- and you should bear this in mind for
5 future -- hold a status conference during the week of 18 to 22 of January 2015 and we
6 will, therefore, be liaising with the Registry in respect of such a scheduling. So just
7 keep that open, please.

8 Right. So I note for the record that Mr Gbagbo is not present today and has
9 requested to be excused. The Chamber granted his request to be excused for today;
10 but, having deliberated on it, the Chamber has rejected his request to be excused on
11 the 12th and the 18th, which is now the 19th of November. And I will provide the
12 Chamber's reasons for this later on during this hearing.

13 I also note for the record that Mr Blé Goudé is present today. From the emails
14 received from counsel for Mr Blé Goudé on the 4th and 5th of November, it is the
15 Chamber's understanding that Mr Blé Goudé has waived his right to be present at the
16 hearings on the 12th and the 19th of November 2015, and to make submissions on any
17 modalities that the Chamber may impose to accommodate Mr Gbagbo's attendance at
18 trial to the extent that those may have an impact on Mr Blé Goudé's rights under
19 Article 67(1)(c) of the Statute.

20 Now, Mr Knoops, is this correct?

21 MR KNOOPS: Mr President, that's a correct summary of our view. Thank you.

22 PRESIDING JUDGE HENDERSON: Thank you.

23 I also note that the Chamber has requested that a representative from the Registry
24 remain on standby during the questioning of the experts in case there are any matters
25 or there are any matters for which immediate intervention may be helpful.

1 The Registry is also asked to be present for oral submissions on the 19 November 2015
2 in the event that there are any matters for which the Registry's submissions may be of
3 assistance to the Chamber.

4 The Chamber will take this opportunity to rule on several pending matters. Now we
5 are in open session, but the Chamber has assessed that the oral rulings it will deliver
6 today and all the summary to confidential filings, the Chamber considers it can be
7 rendered publicly.

8 Now, these rulings relate to, one, the conduct of proceedings; two, the pre-trial brief;
9 three, four requests for leave to appeal; and four, reasons for the Chamber's decision
10 on two requests made by the Gbagbo Defence in relation to the conduct of this
11 hearing, one of which relates to the presence of the accused at the hearing.

12 I will begin with the first one, conduct of proceedings.

13 On 1 October 2015, the Blé Goudé Defence filed its observations and objections on the
14 conduct of proceedings, filing 263. In these observations, the Blé Goudé Defence
15 asked the Chamber to adopt several modifications to the Chamber's directions on the
16 conduct of proceedings, that is to say filing 205.

17 The Prosecution opposes the request in its filing 291.

18 In its view, the request amounts to a motion for reconsideration and was not
19 appropriately made under Rule 134(2) of the rules. The LRV also opposes the
20 request in its filing 310, arguing that the Defence does not raise objections or
21 observations concerning the conduct of the proceedings in the sense of Rule 132(2) of
22 the Rules, but is essentially requesting reconsideration of the Chamber's directions.
23 At the outset, the Chamber would like to make clear that its directions on the conduct
24 of proceedings regulated certain aspects of the conduct of the proceedings, but also
25 intentionally left certain matters unaddressed, which would be the subject -- which

1 would be subject to determination in the course of the trial.

2 However, as the Blé Goudé Defence proposed modifications to the Chamber's
3 directions aim at measures which may contribute greater efficiency and efficacy of the
4 proceedings, the Chamber exceptionally takes this opportunity under Article 64(2) of
5 the Statute to consider whether the suggested modifications of its directions are
6 warranted.

7 (i) The Blé Goudé Defence requests that the Chamber set out a legal standard to be
8 applied in the event that a party or participant wishes to modify the list of material to
9 be used during the examination of a witness. This issue was also raised by the Blé
10 Goudé Defence filing number 77 prior to the Chamber rendering its decision
11 "Directions on the conduct of proceedings."

12 The Chamber does not see the need to set a formal legal standard, but will use its
13 discretion to entertain out-of-time motions or requests as appropriate.

14 (ii) The Blé Goudé Defence requests that the Chamber require that if a statement is to
15 be used to refresh a witness's memory, that the statement be related to statements
16 already introduced into evidence. In its directions, the Chamber recalled the
17 primacy of orality and specified two stipulations for the use of statements to refresh a
18 witness' memory: (i) that the material contains the personal recollections of the
19 witness, and (ii) that copies of the material have been properly disclosed to the
20 opposing parties, who may also rely on it during cross-examination.

21 All other objections to the use of statements to refresh a witness' memory shall be
22 heard on a case-by-case basis.

23 (iii) The Blé Goudé Defence requests the Chamber to give specific directions -- yes.

24 The Blé Goudé Defence requests the Chamber to give specific directions regarding the
25 use of private or closed sessions when it endangers the life of the accused. Now, this

1 same submission was made in its previous filing number 77. The Chamber recalls
2 that it has an obligation to ensure the protection of the accused under Article 57(3)(c)
3 and by virtue of Article 61(11) of the Statute, and the Chamber has the discretion
4 under Article 68(2) of the Statute to go into private or closed session when
5 appropriate. Therefore, a specific direction to this effect the Chamber considers
6 unnecessary.

7 (iv) The Blé Goudé Defence requests that the Chamber set parameters for the timing
8 for the filing of Rule 68(2) applications, when the witness is not scheduled to appear.
9 It suggests that the Chamber set as the time limit 21 days before the party wishes to
10 introduce the prior recorded testimony, the reason being that the Blé Goudé Defence
11 prefers to receive such applications on a rolling basis. In its directions on the
12 conduct of proceedings, the Chamber leaves to the discretion of the calling party the
13 timing for submitting any Rule 68(2) applications. However, should a party or
14 participant consider that the time afforded to respond to the Rule 68(2) application is
15 insufficient, it may file a request for a variation of the time limit in accordance with
16 regulation 35 of the regulations of the Court.

17 Now, this concludes the oral decision relating to the Blé Goudé Defence objections
18 and observations on the conduct of proceedings.

19 I now turn to the pre-trial brief.

20 This relates to the request of the Gbagbo Defence filing 260 that the Chamber (i)
21 declare that the Prosecutor's pre-trial brief is inadmissible; (ii) order the Prosecutor to
22 restructure it and to provide additional information in accordance with the Gbagbo
23 Defence's submissions, and (iii) order the Prosecutor to file a new one.

24 In the request, to briefly summarize, the Gbagbo Defence repeats submissions it has
25 made previously. I refer here to filings 174 and 233 and to oral submissions made at

1 the last status conference on the 25th, September 2015, concerning the importance of
2 the pre-trial brief for the Defence. The Gbagbo Defence also complains that not all of
3 the evidence and witnesses on the Prosecutor's list of evidence and list of witnesses
4 are cited in the pre-trial brief and that the Prosecution has not adhered to its
5 obligation to give adequate notice concerning possible re-characterization for the
6 responsibility under Article 28, because, despite filing an updated section addressing
7 Article 28 liability on 28 August 2015, the cross-referencing citations in that section
8 make it unclear.

9 In their filings, number 300 and 309, the Prosecution and LRV both oppose the
10 request. They emphasize that the pre-trial brief is a tool intended to provide
11 additional notice to the accused but that there is no requirement that it is structured in
12 a particular way.

13 In relation to cross-referencing, the Prosecution submits that the pre-trial brief follows
14 a logical structure whereby the facts and circumstances are set out in parts III and IV
15 and that the legal analysis set out in part V is cross-referenced to these sections to
16 avoid repetition and to save space.

17 The Chamber does not find it necessary to order the Prosecutor to modify or to
18 otherwise refile its pre-trial brief. In its decision of 7 May 2015, that is filing 58, the
19 Chamber purposely invited, rather than ordered, the Prosecution to file a pre-trial
20 brief. This was because, as we explained in that decision and a subsequent decision
21 of 16 December 2015, filing 224, the Statute, Rules and Regulations provide a
22 framework which ensures that an accused receives adequate notice of the nature,
23 cause and content of the charges, and in this case, notice has been clearly provided by
24 the Pre-Trial Chamber in the respective confirmation decisions.

25 Nevertheless, the Chamber considers that a pre-trial brief may be beneficial to

1 Defence preparation. Contrary to the submissions which have been repeatedly
2 made by the Gbagbo Defence, the pre-trial brief does not set the parameters of the
3 trial. It merely -- it is merely the Prosecution setting out its understanding of its case.
4 Challenging the pre-trial brief's admissibility is to misapprehend its purpose. It is a
5 preparation document, not a formal pleading. For this reason, the Chamber does not
6 see any factual or legal basis to rule on its admissibility and, therefore, the Chamber
7 rejects the Gbagbo Defence request.

8 This concludes the oral decision relating to the request of the Gbagbo Defence to
9 declare the Prosecution's pre-trial brief inadmissible.

10 I will now turn to the three pending requests for leave to appeal, which have all been
11 filed by the Gbagbo Defence in connection with Mr Laurent Gbagbo's fitness for trial
12 and any accommodation he may need to facilitate his attendance at trial. These three
13 requests relate to four different decisions.

14 One, leave to appeal the order to conduct a medical examination. On 6 October 2015,
15 the Gbagbo Defence filed a request for leave to appeal the Chamber's order to conduct
16 an examination of Mr Gbagbo under Rule 135 of the Rules. The request is filing 274
17 and order, which I will refer to as the "Impugned Decision" is filing 253.

18 To briefly summarize, in this request, the Gbagbo Defence seeks leave to appeal on
19 five issues:

20 (i) whether the nominated experts -- I beg your pardon. Whether the Chamber
21 nominated experts with sufficient knowledge of the case;

22 (ii) whether the Chamber erred in fact in accepting the Prosecution's submission that
23 the Pre-Trial Chamber had mainly based its findings on Dr Lamothe;

24 (iii) whether the Chamber erred in making a distinction between experts with
25 standing before the Cour de Cassation and the Court of Appeal;

1 (iv) whether the time limits set for the delivery of the expert reports provided
2 sufficient time; and

3 (v) whether the Chamber clearly set out the experts' mandate.

4 In respect of the criteria set out in Article 82(1)(d) of the Statute, which guides the
5 Chamber's decision about whether to grant leave to appeal, the Defence claims in
6 general that fitness to stand trial is of crucial importance and may have a significant
7 effect on the fairness of the proceedings, and that if the Chamber's errors are not
8 corrected now, it will affect the conduct of the proceedings as a whole. Hence, the
9 Gbagbo Defence argues that immediate resolution of the aforesaid issues by the
10 Appeals Chamber would materially advance the proceedings.

11 In response, in its filing 286, the Prosecution asks the Chamber to reject in its entirety,
12 arguing that none of the five issues are appealable under Article 82(1)(d) of the
13 Statute.

14 The Chamber recalls that applications for leave to appeal are governed by Article
15 82(1)(d) of the Statute as set out in previous decisions, and in particular the
16 requirement that an appealable issue is constituted by a subject the resolution of
17 which is, and I stress, essential for the determination of matters arising in the judicial
18 cause under examination.

19 And this is -- this was a position stated by the Appeals Chamber in the situation in the
20 Democratic Republic of the Congo, a judgment of the Prosecutor's application for
21 extraordinary review of the Pre-Trial Chamber's -- Chamber I's 31 March 2006
22 decision.

23 The Chamber considers that issues one, two and three, which all relate to the
24 Chamber's choice of experts, do not meet the criteria under Article 82(1)(d). The
25 Chamber's decision to appoint medical experts "To assist in the adjudication of any

1 issue as to Mr Gbagbo's fitness, as well as the identification of any practical modalities
2 needed to facilitate his attendance at trial," filing 253, is discretionary. It is for the
3 Chamber to determine what information it needs for the purpose of its decision and
4 which experts it deems most appropriate to provide such information. This makes
5 the Gbagbo Defence's submission concerning their preferences for the experts
6 inapposite as long as the experts appointed by the Chamber provide the information
7 that the Chamber needs for the purpose of its decision. Thus, the Chamber does not
8 consider these issues to meet the criteria under Article 82(1)(d) of the Statute, and in
9 particular that it would materially advance the proceedings to put this issue to
10 the Appeals Chamber.

11 Under the fourth issue, the Gbagbo Defence speculates whether the Appointed
12 Experts, who it considers to have insufficient knowledge of the case, would be able to
13 carry out their responsibilities within the timeline set by the Chamber in the
14 Impugned Decision. In its submissions, the Gbagbo Defence provides no
15 explanation about how the issue of the Chamber setting a timeline of one month to
16 produce a report meets the Article 82(1)(d) criteria. On this basis alone, it must be
17 rejected. In addition, the Chamber also notes that the appointed experts in fact filed
18 their respective reports on 29 October 2015, filing 253, and did not request an
19 extension of time limits or raise any concerns regarding fulfilling their mandate
20 within the set time frame.

21 Lastly, regarding the fifth issue, that is to say whether the Chamber clearly set out the
22 experts' mandate, the Chamber repeats that it is wholly within the Chamber's
23 discretion to determine which experts it requires and the terms of reference limiting
24 their assessment; in essence, what we want those experts to do. Thus, the Gbagbo
25 Defence submissions are misplaced insofar as it argues that a more specific mandate

1 needed to be outlined. More than that, the Gbagbo Defence fails to establish how
2 this issue meets the relevant criteria under Article 82(1)(d) of the Statute.

3 In sum, therefore, although the concept of fitness to stand trial must be viewed as an
4 aspect of the broader notion of a fair trial, the Gbagbo Defence's submission as to the
5 selection of experts and their specific mandate are inapposite, and rather point to a
6 general state of dissatisfaction with the Impugned Decision without any apparent link,
7 any apparent nexus between or link to Article 82(1)(d) requirements, including the
8 fairness and expeditiousness of the proceedings or the outcome of the trial. For
9 these reasons, the Chamber dismisses the request in its entirety.

10 This concludes the oral decision relating to the request of the Gbagbo Defence for
11 leave to appeal the Chamber's order to conduct a medical examination.

12 I now turn to leave to appeal order to transfer the medical records to Dr Lamothe.

13 The Chamber will now render its decision on the Gbagbo Defence's 26 October 2015
14 request, that is filing 315, for leave to appeal the Order to Provide Appointed Expert
15 with Access to Mr Gbagbo's Medical Record, that is filing 302, 302. In this
16 application, the Gbagbo Defence identifies two issues which, it submits, arise from the
17 Impugned Decision:

18 (i) That, in considering in the impugned decision that Mr Gbagbo acted mala fide, the
19 Chamber demonstrated bias against the accused, thereby rendering the Impugned
20 Decision unlawful.

21 (ii) That the Chamber committed an error of law in ordering the transmission of the
22 medical file without the consent of the accused.

23 In filing 326, the Prosecution opposed the request.

24 At the outset, the Chamber notes, and not for the first time, that the Gbagbo Defence
25 submissions misstate or misinterpret the Chamber's rulings or they appear to have

1 repeated submissions that were already taken into account in the Impugned Decision.

2 Under the first issue, the Gbagbo Defence objects to specific language located at

3 paragraph 14 of the Impugned Decision. Under this heading, the Gbagbo Defence

4 raises three sub-issues.

5 Firstly, the Defence claims that the Chamber erred because it did not take into account

6 that the Gbagbo Defence had raised its concerns regarding Dr Lamothe earlier.

7 However, at footnote 30 of the Impugned Decision, Mr Gbagbo's general submissions

8 concerning Dr Lamothe raised prior to his first notification were in fact noted.

9 Secondly, it claims that the Chamber erred in conflating Mr Gbagbo's consent to

10 transmit his medical records to Dr Ludes and Mr Dumez with consent to transmit his

11 medical record to Dr Lamothe. This assertion misrepresents paragraph 19 of the

12 Impugned Decision. Rather, in that paragraph the Chamber stated that allowing Dr

13 Lamothe access to the medical records results in limited interference with

14 Mr Gbagbo's privacy rights, in part because he had already consented to transmission

15 of his medical records for the purposes of the Rule 135 examination.

16 Third, the Gbagbo Defence claims that Mr Gbagbo's refusal of consent to transmit his

17 medical records cannot form the basis of calling into question his good faith, and that

18 doing so demonstrates the Chamber's bias. Again, this misrepresents the Chamber's

19 order. Mr Gbagbo's good faith was questioned by the Chamber not because he

20 withheld his consent, but because the specific concerns he raised about Dr Lamothe

21 were wholly unsubstantiated.

22 On this basis, therefore, the Chamber finds equally unsupported the Gbagbo

23 Defence's claims of the Chamber's bias.

24 This is simply not true. The Chamber notes, and again not for the first time, an

25 allegation of bias made against this Chamber. While the Chamber acknowledges the

1 right of Defence counsel to defend the interest of his client without fear of judicial
2 disfavour or unpopularity and the right to do so robustly, suggesting bias on the basis
3 that you disagree with or are unhappy with a decision is not the way and it is
4 unfortunate.

5 And the Chamber says this in the strongest terms. A complaint of bias must be
6 properly grounded on an evidential basis that does not misrepresent the Impugned
7 Decision. And on this we shall say no more.

8 As for the second issue, whether the Chamber's decision to transmit the medical
9 record to Dr Lamothe lacked legal basis, the Chamber considers this to be an issue
10 arising from the decision within the meaning of Article 82(1)(d) of the Statute.

11 However, the Chamber recalls that at paragraph 22 of the Impugned Decision, it set
12 out at some length the legal basis for its decision. The Chamber therefore considers
13 that the essence of the Defence's submission on this point have been taken into
14 account in the Impugned Decision. Thus, the request for leave to appeal constitutes
15 an attempt by the Gbagbo Defence to relitigate previous submissions made before the
16 Chamber.

17 Finally, both issues fall short of the criteria under Article 81 -- I beg your
18 pardon -- under Article 82(1)(d). A general reference to the importance of fitness
19 proceedings in general does not, in and of itself, satisfy the leave to appeal criteria in
20 respect of these two issues. The Defence patently fails to demonstrate a specific link
21 between the issues it has identified and a significant impact on the fair and
22 expeditious conduct of the current proceedings. Finally, the Chamber considers that,
23 in any event, the resolution of the two issues by the Appeals Chambers would not
24 materially advance the proceedings.

25 This concludes the Oral Decision relating to the request of the Gbagbo Defence for

1 leave to appeal the Order to provide Appointed Experts with access to Mr Gbagbo's
2 medical record.

3 I will now turn to the leave to appeal, leave to appeal the "Decision granting the
4 request of the Gbagbo Defence and rescheduling opening statements" and the "Order
5 on the classification of the experts' report -- the expert reports and other related
6 documents." Let me just repeat that. Leave to appeal the "Decision granting the
7 request of the Gbagbo Defence and rescheduling opening statements" and the "Order
8 on the classification of the expert reports and other related documents."

9 In the third request for leave to appeal, consolidated in the filing of 3 November 2015,
10 filing 330 against two decisions of the Chamber, the Gbagbo Defence contests the
11 Chamber's decision inviting the Blé Goudé Defence and the LRV to participate in this
12 hearing and allowing them the possibility to put questions to the experts. It raises
13 two issues for appeal: (1) whether the Chamber erred in authorizing the LRV and the
14 Blé Goudé Defence to participate in the hearing relating to the health of Mr Gbagbo
15 and in authorizing them to question the experts; (ii) whether the Chamber provided
16 sufficient reasoning in its decision. The Defence argues in general that as the
17 question of fitness of an accused is of crucial importance, so too must be any decision
18 relating to that.

19 In filing 337, the Prosecution submits in response that the request should be rejected
20 because, among other things, the issues raised do not meet the criteria under Article
21 82(1)(d). In filing 339, the LRV argues that the first issue does not arise from the
22 Chamber's decision because it constitutes a misreading of that decision, and a second
23 issue is not an appealable issue within the meaning of Article 82(1)(d) because it
24 merely reflects the Defence's disagreement with the Chamber's decision.

25 The Chamber will address both issues at once.

1 The Chamber reiterates that the criteria under Article 82(1)(d) must be linked to the specific
2 issues that the party raises for appeal. Thus, it is not enough to make general submissions as
3 to the importance of fitness of an accused to stand trial, if the issues raised in relation to this
4 principle do not themselves meet the criteria of Article 82(1)(d). Yet the submissions by the
5 Gbagbo Defence are aimed entirely at the general principle of fitness to stand trial, making
6 only, in the Courts view, the circular argument that because the issue of fitness is so central to
7 the proceedings, the issue of how fitness is assessed is therefore central. In short, the Gbagbo
8 Defence makes no link to the specific issue of permitting the Blé Goudé Defence and the LRV
9 to participate in the hearing with the criteria of Article 82(1)(d). And on this basis, the
10 Chamber requests -- rejects the request.

11 This concludes the oral decision relating to the request of the Gbagbo Defence for
12 leave to appeal decisions 322 and 329.

13 Now, having rendered these decisions on the three applications for leave to appeal,
14 attorneys, I would wish to raise two matters of general importance with you. The
15 first is to echo a statement made by my esteemed colleague on my left, Judge Schmitt,
16 in the context of the Bemba et al. case where he said, and I will quote:

17 "While the Chamber is mindful of the rights of the Parties to seek legal remedy under
18 Article 82(1)(d), I would like to remind that such interlocutory appeals are exceptional.
19 They are neither meant to be a hidden application for reconsideration nor a legal tool
20 to express mere disagreement with any of the Chamber's decisions. Furthermore,
21 even if we talk about potentially reversible error, this may be better and justly
22 deferred to any final appeal under Article 81."

23 The second matter, which I wish to raise with you, has to do with making timely
24 applications or requests. It is less than ideal where a party seeking the Chamber's
25 leave on a matter makes the request literally at the last moment. Two examples will

1 suffice to illustrate this point. An application for an extension of time made almost
2 on the day of the deadline leaves little time to obtain the observations of the other
3 parties and participants and for the Chamber to deliberate and give its decision.
4 In like manner, a request for waiver of attendance of the accused made a day or two
5 days before the hearing carries with it the additional practical matter of either
6 cancelling or having to arrange the transportation of the accused, things which have
7 already been set in motion.

8 For these reasons, parties and participants are urged to make such requests in a
9 timely manner. Inappropriate circumstances where the request is filed with
10 insufficient time for the Chamber to obtain observations and to properly consider the
11 request, the Chamber may have to simply refuse the request on the basis that it was
12 not filed in a timely manner.

13 Having said this, we shall now move to the topic for which these hearings were
14 scheduled, and the Chamber will also provide its reasons for two decisions which
15 relate to these proceedings.

16 Now, the hearings to be held today, and on 12 November and 19 November have
17 been convened following the Chamber's decision of 7 September 2015, that is filing
18 206, in light of the Prosecution's request to order a medical and psychiatric
19 examination of Mr Gbagbo under Rule 135 of the Court's Rules of Procedure and
20 Evidence.

21 In the Chamber's order of 30 September 2015, filing 253, it appointed three experts to
22 undertake this examination with a view to assessing Mr Gbagbo's current -- and let
23 me state it in quotations, "In the Chamber's order of 30 September 2015, filing 253, it
24 appointed three experts to undertake this examination "with a view to assessing
25 Mr Gbagbo's current medical condition, including whether he is still suffering from

1 post-traumatic stress disorder, that is PTSD, and hospitalisation syndrome, and if so,
2 identifying the consequences of this, if any, on Mr Gbagbo's ability to follow and take
3 part in the forthcoming trial proceedings. That's filing 253 at paragraph 12.

4 In that same order, the Chamber indicated that the purpose of the medical
5 examination was "to assist in the adjudication of any issue as to Mr Gbagbo's fitness,
6 as well as the identification of any practical modalities needed to facilitate his
7 attendance at trial," 253, paragraph 9.

8 On 27 October 2015, in filing 318, the Gbagbo Defence filed a request that the
9 Chamber order the attendance of the appointed experts at this hearing to allow the
10 parties the opportunity to question them on the methodology they used during their
11 examinations and on the contents of their reports. The Prosecution responded in
12 filing 321. And on 28 October, the Chamber granted this request in filing 322.

13 On 29 October 2015 the Registry filed the three expert reports in the case record, filing
14 325.

15 Pursuant to an order of the Single Judge, the parties and participants each filed a
16 notice indicating whether they intended to question the experts, if so, the estimated
17 time needed to do so, the estimated time needed to make oral submissions at the
18 conclusion of this hearing, and to notify the Chamber, parties and participants of any
19 additional material they intend to use in the course of the hearings.

20 In their notifications, that is filings 334 and 335, the Prosecution and LRV both
21 indicated that they did not intend to question the experts. The Prosecution reserved
22 its right to address any matters raised through questioning, and the LRV indicated
23 that should any issue arise during the hearing which could impact the victims'
24 interests, the LRV would request leave of the Chamber to intervene. The Chamber
25 has accepted both proposals.

1 In its notification sent via email to the Trial Chamber Communications inbox on 5
2 November 2015 at 14h00 hours, counsel for Mr Blé Goudé indicated that
3 Mr Blé Goudé respectfully requested to be authorized not to attend these hearings.
4 This request was accepted by the Chamber on 5 November 2015, provided that
5 Mr Blé Goudé knowingly waived his right to make submissions on the impact, if any,
6 on his Article 67(1)(c) rights. This was confirmed by counsel for Mr Blé Goudé via
7 email on 6 November 2015 at 16 hours 21 minutes.

8 On 5 November 2015 at 16 hours 28 minutes, counsel for Mr Gbagbo filed its
9 notification in an email sent to the Trial Chamber, one, communication inbox by
10 counsel for Mr Gbagbo at 16.43, counsel indicated that, for technical reasons, it was
11 unable to file its notification on time through e-filing. In the notification, the Gbagbo
12 Defence indicated its intention to question all three experts and made a number of
13 related submissions concerning the conduct of these proceedings. It may be noted
14 that these related submissions exceeded the scope of the Chamber's instructions
15 concerning the notification. In turn, the Prosecution's response, filing 340, vastly
16 exceeded the scope of the notification, and today the Chamber received a filing 343
17 from the Gbagbo Defence entitled "Observations to the Prosecution's Response,"
18 which also vastly exceeded the scope of the Chamber's instructions and the
19 Prosecution's response.

20 The Chamber disapproves of this practice and wishes the attorneys to pay heed to
21 what the Chamber has said.

22 In addition, although they were titled as observations, the Gbagbo Defence's filings of
23 today are really, in the view of the Chamber, a reply which was filed without prior
24 leave of the Chamber and this, therefore, must be disregarded.

25 In respect of the Gbagbo Defence's notification, the Single Judge answered each of the

1 Gbagbo Defence's submissions via email dated 6 November 2015 at 1400 hours and 58
2 minutes, which was copied to the parties and participants.

3 In the email, the Single Judge indicated that the reasons for his ruling on these matters
4 would be provided orally at the hearing. The Single Judge also notes for the record
5 that the Prosecution's aforementioned response, filing 340, was filed after the email
6 was sent but indicated, among other things, that it did not oppose the Gbagbo
7 Defence's proposals related to the conduct of the proceedings, but did oppose the
8 filing of written submissions and the request to extend the deadline to notify any
9 additional documents.

10 The Single Judge's reasons are as follows:

11 (i) the Single Judge accepted the Gbagbo Defence's request to question all three
12 experts in order to give the Gbagbo Defence the fullest opportunity to question them
13 regarding the contents of their reports and the methodologies they used in examining
14 Mr Gbagbo. In light of this and the unavailability of Mr Dumez, who is currently
15 located in a remote location without any means of communication, the Single Judge
16 was required to set as a final day for this hearing Thursday, 19 November 2015, to
17 hear from Mr Dumez and to receive the parties and participants' final submissions.

18 The Single Judge rejected the Gbagbo Defence's request concerning the order that the
19 experts would appear due to the availability of these experts to travel to The Hague.

20 (iii) The Single Judge accepted the Gbagbo Defence's alternative request concerning
21 the order that the parties would question the experts, allowing the Gbagbo Defence to
22 go first, and if necessary, last.

23 (iv) The Single Judge accepted the Gbagbo Defence's request that the experts not be
24 present in the courtroom for each other's testimony due to the availability of the
25 experts. So that has been granted.

1 The Single Judge -- (v) The Single Judge accepted the Gbagbo Defence's estimation of
2 the time needed for the questioning and for oral submissions. However, the Single
3 Judge notes that the estimated amount of time requested appears generous. During
4 this hearing the Chamber will be vigilant that the questioning is strictly limited to the
5 purposes for which we are convened, namely, to question the experts on the content
6 of their reports and their methodology. The Chamber will also be vigilant that the
7 oral submissions are not repetitive and that they are focused on the adjudication of
8 any issue as to Mr Gbagbo's fitness and any practical modalities needed to facilitate
9 his attendance at trial.

10 (vi) In light of the Single Judge's acceptance of the full estimated amount of time
11 requested by the Gbagbo Defence for its oral submissions, it rejected the request for
12 written submissions considering this to be unnecessary and duplicative.

13 (vii) The Single Judge accepted the request of the Gbagbo Defence for an extension of
14 time to submit additional documents to be used for the purpose of the hearing. This
15 was because, as the experts were to be called only on the 12 November, and this day
16 was to be reserved for oral rulings, the Chamber considered that it would not cause
17 additional prejudice to allow the request for an extension of time.

18 (viii) The Single Judge rejected the request of the Gbagbo Defence for an ex parte
19 session so that it could refer to ex parte documents in the case record. The Chamber
20 has already stated that "subject to justified restrictions, Rules 121(10) and 131(2) of the
21 Rules entitled the parties and the LRV to consult the case record," see filing 101. The
22 Gbagbo Defence did not justify its reasons for an ex parte hearing. As such, the
23 Single Judge considered there was no basis to accept this request. The Single Judge
24 further indicated that should the Gbagbo Defence wish to refer to any document
25 currently in the case file and classified as confidential, ex parte, these shall be notified

1 to the Prosecution and the LRV with redactions as necessary by Monday, 9
2 November 2015, at 1600 hours. Such redactions were to be applied in accordance
3 with the Chamber's instructions in its 30 September 2015 order, see
4 ICC-02/11-01/15-253, at paragraph 19.

5 We are coming now, we are coming near to the end of the decision. Now, I turn now
6 to filing 338. On 6 November 2015, in filing 338, counsel for Mr Gbagbo also filed a
7 notice in the record of the case indicating that Mr Gbagbo requested permission not to
8 attend this hearing. Mr Gbagbo did not provide any specific reasons for his request,
9 except to the extent that it is submitted that an accused may generally waive his right
10 to attend. On 9 November 2015, the Prosecution filed its response to the request not
11 objecting to Mr Gbagbo not being present today, but opposing the request not to be
12 present on 10 and 19 November because in their view Mr Gbagbo "ought to be
13 present during the crucial hearings, particularly ones dealing with his fitness and
14 modalities of his presence at trial."

15 In an email dated 9 November 2015, at 16 hours 31 minutes, the Chamber granted the
16 request in respect of the sessions to be held on 10 November 2015, but rejected it for
17 the sessions to be held on 12 and 18 November, now the 19th. The reasons for this
18 decision are as follows:

19 The Chamber has acknowledged Mr Gbagbo's voluntary waiver. However, it has
20 considered that based on the nature of the matters to be discussed and presented at
21 the hearings to be held on the 12 and 19 November 2015, and in particular that the
22 experts will be testifying on information provided to them by Mr Gbagbo, it would
23 not be in the interests of justice for Mr Gbagbo to be absent from these sessions. The
24 Chamber has also considered in this regard that Mr Gbagbo has previously raised
25 concerns about whether one of the experts reported Mr Gbagbo's communications out

1 of context, filing 190. The Chamber has further considered that Mr Gbagbo did not
2 provide any specific reasons justifying his absence from these hearings. And for
3 these reasons, the Chamber rejects Mr Gbagbo's request for waiving his attendance on
4 those two days.

5 In light of these rulings, the Chamber has organised the rest of the hearings as
6 follows:

7 (i) On Thursday, we will begin with the questioning by Dr Lamothe followed by Dr
8 Ludes. The Gbagbo Defence will have an opportunity to question, to examine Dr
9 Lamothe first and the Prosecution second, as necessary. The Chamber will then take
10 this opportunity to question witnesses as necessary. Thereafter the Gbagbo Defence
11 will have an additional opportunity to put any follow-up questions to Dr Lamothe.
12 To be clear, and just so that anyone and everyone is aware, the Chamber of course
13 may intervene from time to time during the testimony to question the witnesses as
14 necessary. The LRV will be permitted to request leave of the Chamber to intervene
15 after questioning by the Prosecution and before any final questions of the Gbagbo
16 Defence. Questioning by the Chamber, parties and participants will follow the same
17 order for Dr Ludes.

18 We will next then reconvene on Thursday, 19 November 2015, for the questioning of
19 Dr Dumez. Questioning by the Chamber, parties and participants will follow the
20 same order.

21 After the questioning of Dr Dumez has concluded, the parties and participants will
22 have an opportunity to make final oral submissions. The Prosecution will speak first,
23 then the LRV, followed by the Registry. The Gbagbo Defence will speak last.

24 Right. Now, that has been quite a mouthful. I've been going at a pace for just over
25 an hour. Now I will ask and give each one of you an opportunity to let me know if

1 there is anything that arises out of what I have just said.

2 So I'll start with you, Mr MacDonald.

3 MR MACDONALD: No comments, your Honour.

4 PRESIDING JUDGE HENDERSON: Mr Altit?

5 MR ALTIT: (Interpretation) No comment, Mr President.

6 PRESIDING JUDGE HENDERSON: Ms Massidda?

7 MS MASSIDDA: Nothing on your side, your Honour.

8 PRESIDING JUDGE HENDERSON: Mr Knoops? Please forgive me.

9 MR KNOOPS: Apologies accepted, Mr President. No observations. Thank you very

10 much.

11 PRESIDING JUDGE HENDERSON: Thank you.

12 Well, there being nothing arising out of what the Chamber's decision and also the

13 Chamber's road map of how we will be proceeding moving forward for the fitness

14 hearings, it just leaves me to thank you for attending this afternoon, and we have

15 concluded this part of the hearing. We will reconvene on Thursday morning starting

16 in earnest with the examination of Dr Lamothe, and for this we will begin at 9.30

17 promptly.

18 Today's hearing is adjourned. Thank you very much.

19 THE COURT USHER: All rise.

20 (The hearing ends in open session at 3.39 p.m.)