

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/11-01/15
Date: **17 September 2015**

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

**Prosecution response to Laurent Gbagbo's request for protection to enable
Defence investigations (ICC-02/11-01/15-223)**

Source: Office of the Prosecutor

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

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Introduction

1. The Trial Chamber should dismiss the “*Demande à la Chambre de mesures de protection de façon à permettre le travail d’enquête des équipes de Défense*” (“Defence Request”)¹ filed by the Gbagbo Defence. The Request is premature and relies upon unfounded and mostly irrelevant facts. The Chamber’s intervention is unnecessary at this juncture.

Submissions

The Request raises no specific or objectively identifiable security risk

2. The Gbagbo Defence has raised no specific, or objectively identifiable security risk or impediment to the conduct of their investigations in Côte d’Ivoire. Indeed, no such risk or impediment has been identified over the course of almost four years since Gbagbo’s arrest and transfer to The Hague. There is no evidence that the Ivoirian authorities are interfering with the conduct of Defence investigations, and no specific allegation is made in this regard. Nor have any steps been made to consult with or otherwise secure the assistance of the Registry in addressing any alleged security or other impediments to the Defence investigations in Côte d’Ivoire.
3. Following the arrest and transfer of the Accused Laurent Gbagbo to the seat of the Court on 30 November 2011, confirmation proceedings were initiated for purposes of which Gbagbo’s Defence submitted over 900 pieces of evidence² in support of its submissions during the confirmation phase, including 53 screening notes of potential Defence witnesses.³ It seems, then, that there were no security

¹ ICC-02/11-01/15-223.

² See documents starting with ERN CIV-D15 uploaded in Ringtail.

³ See CIV-D15-0001-0654; CIV-D15-0001-1273; CIV-D15-0001-1300; CIV-D15-0001-1302; CIV-D15-0001-1306; CIV-D15-0001-1311; CIV-D15-0001-1396; CIV-D15-0001-3689; CIV-D15-0001-3695; CIV-D15-0001-3704; CIV-D15-0001-3724; CIV-D15-0001-4499; CIV-D15-0001-4508; CIV-D15-0001-5357; CIV-D15-0001-5381; CIV-D15-0001-5397; CIV-D15-0001-5402; CIV-D15-0001-5407; CIV-D15-0001-5411; CIV-D15-0001-5415; CIV-D15-0001-5419; CIV-D15-0001-5426; CIV-D15-0001-5435; CIV-D15-0001-5440; CIV-D15-0001-5442; CIV-D15-0001-5461; CIV-D15-0001-5465; CIV-D15-0001-5483; CIV-D15-0001-5491; CIV-D15-0001-5500; CIV-D15-0001-5504; CIV-D15-0001-5508; CIV-D15-0001-5514; CIV-D15-0001-5522; CIV-D15-0001-

or other issues which prevented the full progress of Defence investigations in Côte d'Ivoire during the confirmation proceedings.

4. The Request relies upon an event concerning the Blé Goudé Defence team as a factual basis for its alleged security concerns.⁴ This event took place on 9 June 2015.⁵ It is surprising, then, that it is raised only now, less than two months before the start of trial. On 11 September 2015, the Accused Blé Goudé filed the "Defence Notification on Security Incidents" ("Blé Goudé Notice"), notifying the Chamber of an incident whereby his co-Counsel had been robbed of his smartphone and an considerable amount of hard currency on 9 June 2015.⁶ No link has been established between the theft of the Blé Goudé co-Counsel's telephone, and an envelope full of cash money, and an alleged policy on the part of the Ivoirian authorities to interfere with Defence investigations.⁷
5. The Blé Goudé co-Counsel's perception that the attack may have been related to his involvement in the present case is based on speculations.⁸ As the Appeals Chamber in the *Katanga* case has held – within the context of witness security and protection – any alleged risk to security must be "objectively justifiable".⁹ It is surprising that – in the face of the Defence maintaining that it is under "*une obligation éthique de ne pas enquêter pour ne pas mettre en danger les personnes avec qui ses membres pourraient être en contact*"¹⁰ – the Gbagbo Defence has chosen to file its request publicly.
6. Gbagbo otherwise relies upon an extended presentation of the historical and political background of the conflict in Côte d'Ivoire.¹¹ This is irrelevant and does

5530; CIV-D15-0001-5806; CIV-D15-0001-5860; CIV-D15-0001-6066; CIV-D15-0001-6092; CIV-D15-0001-6098; CIV-D15-0001-6108; CIV-D15-0001-6112; CIV-D15-0001-6118; CIV-D15-0001-6190; CIV-D15-0001-6309; CIV-D15-0001-6316; CIV-D15-0001-6369; CIV-D15-0001-6392; CIV-D15-0001-6404; CIV-D15-0001-6412; CIV-D15-0001-6444; CIV-D15-0001-6447; CIV-D15-0001-6526.

⁴ Request, para.1.

⁵ See ICC-02/11-01/15-216-Conf, Annex 2.

⁶ The public redacted version was filed on 16 September 2015, ICC-02/11-01/15-216-Red.

⁷ Request, para.40.

⁸ See ICC-02/11-01/15-216-Conf, Annex 2, p.5 : « *ne peux pas m'empêcher de me faire des idées...* ».

⁹ ICC-01/04-01/07-475, para.71.

¹⁰ Request, para. 53.

¹¹ Request, paras.10-37.

not support his claim that the Ivoirian authorities are doing everything to hamper the Defence investigation.¹²

Gbagbo's request for orders to the Registry is premature

7. The Request seeks an order that the Registry and Defence locate equipment for the purposes of encrypting Defence communications.¹³ The Prosecution gathers that the Defence have taken no steps to contact the Registry in the last three months – since the robbery of the Blé Goudé co-Counsel – to secure appropriate equipment. Absent any attempt to seek a solution with the Registry, the reasons for requesting the Chamber's intervention at this juncture remain unclear. The provision of telephones with encryption capabilities is not a matter requiring relief from the Chamber, at least not in the current context.

Gbagbo's request to warn Côte d'Ivoire and France is without merit

8. Gbagbo seeks the issuance of a vague warning to the authorities of Côte d'Ivoire and France to highlight the importance of Defence investigations.¹⁴ While the Court has the power to take measures *vis-à-vis* States Parties on matters relating to cooperation pursuant to Part 9 of the Statute,¹⁵ the Court would need to receive concrete and identifiable examples of non-cooperation or interference with investigations. To this end, the Appeals Chamber has taken into consideration the fact that parties have made attempts to secure cooperation when evaluating a failure to cooperate.¹⁶ As highlighted above, it is plain from the confirmation process that Gbagbo was able to investigate and collect evidence.¹⁷

¹² Request, para.40.

¹³ Request, p.19.

¹⁴ Request, p.19.

¹⁵ See article 87(7).

¹⁶ See for example, ICC-01/09-02/11-908, paras.35 and 45. This is consistent with the jurisprudence of *ad hoc* tribunals, instructive in the context of the Request; see *Prosecutor v. Karadzic*, Case No. IT-95-5/18-T, Decision on the Accused's Motion for Binding Order to International Commission for Missing Persons, para.16, citing

¹⁷ See *supra*, para.2. *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-AR108bis.2, Decision on Request of the United States of America for Review, 12 May 2006, para.23.

9. There is no other proper basis offered by the Defence for the relief sought. It is submitted that the issuance of a “warning” to the above-mentioned authorities is imprecise and unsupported.

Gbagbo’s renewed request to delay the start of trial is unfounded

10. Gbagbo has filed no requests in the past four years since his transfer to The Hague with respect to his alleged inability to investigate or purported failure of States to cooperate. As stated above, this assertion is inaccurate. By this Request, Gbagbo is seeking to delay these proceedings by filing an unsupported motion. The Gbagbo Defence has been unsuccessful in its prior arguments for a significantly delayed commencement date for this trial,¹⁸ and a previous request to vacate the commencement date was rejected by the Trial Chamber on 16 September 2015.¹⁹ Seizing the opportunity of the Blé Goudé Notice, and without any concrete examples of a failure to cooperate by the authorities he targets, Gbagbo provides no basis for suspending the start of trial.

¹⁸ See among others, ICC-02/11-01/15-T-1, pp.90-91, p.93, lns.20-22 (seeking commencement of trial in April 2016); ICC-02/11-01/15-174 (seeking a 6 months postponement of the trial pending a French translation of the pre-trial brief); ICC-02/11-01/15-71 (Seeking an extension of the time accorded to the Defence for its preparation before trial proper commences so as to allow for the analysis of the Prosecutor’s evidence from the standpoint of the new mode of liability), ICC-02/11-01/15-63 and ICC-02/11-01/15-64 (seeking leave to appeal the order on the commencement of trial)

¹⁹ ICC-02/11-01/15-224.

Conclusion

11. For the foregoing reasons, the Prosecution respectfully requests that the Trial Chamber dismiss the Defence Request.

A handwritten signature in blue ink, appearing to read 'Bensouda', is written over a horizontal line. The signature is stylized with a large initial 'B' and a long, sweeping underline.

Fatou Bensouda, Prosecutor

Dated this 17th day of September 2015
At The Hague, The Netherlands