



Original: English

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

Date: 2 October 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

with Confidential Annex A

Prosecution's response to Laurent Gbagbo's « *Requête de la Défense afin que les déclarations d'ouverture du procès aient lieu en Côte d'Ivoire ou du moins en Afrique* » (ICC-02/11-01/15-241)

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 Prosecution opposes the Gbagbo Defence *Requête de la Défense afin que les déclarations d'ouverture du procès aient lieu en Côte d'Ivoire ou du moins en Afrique*, filed on 25 September, that the Trial Chamber recommend to the Presidency that opening statements be held in Abidjan, Côte d'Ivoire, or alternatively in Arusha, Tanzania.¹ While the Prosecution recognises the merits of holding trials, in whole or in part, close to affected victim communities, in these proceedings holding the opening statements in either Abidjan or Arusha is neither desirable nor in the interests of justice.
2. First, there are significant security issues associated with holding opening statements in Abidjan, coupled with anticipated logistical issues, which outweigh any perceived benefit in bringing the proceedings closer to the affected communities in Côte d'Ivoire. Second, holding the opening statements in Arusha does not fulfil the aim of bringing the proceedings closer to the affected communities in Côte d'Ivoire, and is therefore not justified.
3. On a practical level, the Prosecution notes that the Request - filed less than two months before the start of the trial - should have been made earlier, both to allow sufficient time for consultation with the State concerned, in the event that a recommendation is made to hear the opening statements in either Abidjan or Arusha,² and for any consequent logistical arrangements to be made.
4. The Prosecution attaches as confidential Annex A the Prosecution's Operations Support Unit's risk assessment of potential *in situ* hearings in both Abidjan and Arusha, addressing the security perspective in relation to both locations ("the Prosecution's risk assessment").

¹ ICC-02/11-01/15-241 (the "Request").

² As required by rule 100(3) of the Rules of Procedure and Evidence ("Rules").

Procedural History

5. On 7 May 2015, the Trial Chamber set the commencement date for the trial on 10 November 2015, “in order to hear the opening statements of the parties and participants” with the presentation of evidence to take place in January 2016.³
6. On 25 September 2015, the Gbagbo Defence filed this Request, also circulated by email on the night of 24 September.⁴
7. On 25 September, the Blé Goudé Defence filed its *Defence Observations on ‘Requête de la Défense afin que les déclarations d’ouverture du procès aient lieu en Côte d’Ivoire ou du moins en Afrique’*, a corrigendum of which was subsequently filed.⁵
8. During the status conference of 25 September 2015, the Trial Chamber asked the Parties and participants and the Registry to present their preliminary views on “[H]olding hearings in situ, including the suggestion [...] that opening statements be held in Abidjan or Arusha.”⁶
9. On 30 September 2015, the Trial Chamber shortened the deadline for any response to the Request to 14 October 2015.⁷

Applicable Law

10. Article 3(3) of the Statute provides: “The Court may sit elsewhere [than in The Hague], whenever it considers it desirable as provided in this Statute.”

³ ICC-02/11-01/15-58, para. 16.

⁴ Email from Jennifer Naouri to Parties and participants, 24 September 2015, 21h44, entitled «*Copie de Courtoisie*».

⁵ ICC-02/11-01/15-243 (the “Blé Goudé Response”).

⁶ ICC-02/11-01/15-T-4-ENG ET, p. 14, l. 2-4.

⁷ Email from Trial Chamber I Communications (Elizabeth Little, on behalf of the Single Judge) 30 September 2015, 17h23, entitled «Laurent Gbagbo and Charles Blé Goudé Case : ICC-02/11-01/15-241 - Requête de la Défense afin que les déclarations d’ouverture du procès aient lieu en Côte d’Ivoire ou du moins en Afrique. »

11. Article 62 of the Statute provides: “Unless otherwise decided, the place of the trial shall be the seat of the Court.”
12. Rule 100(1) of the Rules provides that the Court may decide to sit in a State other than the host State “for such period or periods as may be required, to hear the case in whole or in part”, where it “considers that it would be in the interests of justice”.
13. Under rule 100(2), the Trial Chamber may decide to make a recommendation changing the place where the Chamber sits. Such a recommendation “shall take account of the views of the parties, of the victims and an assessment prepared by the Registry and shall be addressed to the Presidency.”⁸
14. Thereafter, the Presidency is required, by rule 100(3), to consult the State where the Chamber intends to sit, and - if that State agrees - then the decision to sit in a State other than the host State is taken by the Presidency, in consultation with the Chamber.
15. The issue for the Trial Chamber is whether it is desirable and in the interests of justice to change the place where the Chamber sits.⁹

Submissions

16. As a general principle, the Prosecution recognises the merits of holding trials, in whole or in part, close to affected victim communities where this is feasible and where the Court can ensure the protection of victims, witnesses, Court staff and the Accused.
17. However, the Prosecution opposes the Request to hold opening statements in Abidjan or Arusha, because doing so is not desirable or in the interests of justice, for the reasons stated below.

⁸ Rule 100(2).

⁹ ICC-01/04-02/06-645-Red (“*Ntaganda* Presidency Decision”), para. 18. *See also* ICC-01/04-02/06-526 (“*Ntaganda* Trial Chamber’s Recommendation”), para. 20-21, 23.

Timing of Request

18. The Prosecution notes that the Request is filed late, given that the trial is due to start on 10 November. In the event that a recommendation is made to hear the opening statements in either Abidjan or Arusha, the Presidency is required to consult with the relevant State.¹⁰ Carrying out these consultations will no doubt take time. So far as holding opening statements in Abidjan is concerned, the Request may present serious national security concerns during a sensitive election period. In addition, as the Registry has indicated in its preliminary views - regarding the feasibility of holding opening statements in Abidjan: "given that the trial is to begin very soon, we think that going through necessary steps for the Registry, in other words, assessing the security situation, the political situation and also in negotiations with the State, it will not be possible to finalize all of the preparations in time for 10 November as far as the Côte d'Ivoire is concerned."¹¹

Abidjan

19. The Prosecution opposes holding the opening statements in Abidjan because any perceived benefit in bringing the proceedings closer to the victim communities is outweighed by the security concerns described below, and logistical issues thus far identified by the Registry.

20. With respect to security concerns, the opening statements are due to take place on 10 November 2015, after the first round of the Presidential Election in Côte d'Ivoire currently scheduled to take place on 25 October 2015. Thus, the opening statements will take place either just after the Presidential Election, or during the Presidential Election in the case of any delays or, if there is a second round, between the first and second

¹⁰ See Rule 100(3) of the Rules.

¹¹ ICC-02/11-01/15-T-4-ENG ET, p. 59, l. 13-17.

rounds of the Presidential Election. Neither Defence team has formally waived the attendance of the Accused at opening statements, in the event they were to be held in Abidjan. In its Request, the Gbagbo Defence did not address the presence of the Accused or waive it. When asked at the status conference on 25 September 2015 to specifically address their position on the issue, the Gbagbo Defence stated: “But if we accept the principle, it is only after that that we can discuss the issue of the presence of the accused or not. [...] So if it is possible, Mr President. But if it was not possible, then all of us together should examine -- the possibility of organizing a hearing without the accused.”¹² The Blé Goudé Defence have advised that “[i]n case the Court would rule in favour of having opening statement in Côte d'Ivoire, Mr Blé Goudé would prefer to attend such a ceremony.”¹³

21. The Prosecution’s risk assessment has recommended against holding the open statements in Abidjan for the following four reasons:

- i. “There is a high risk for the hearing being used/instrumented by various political actors;
- ii. The return of LG [Laurent Gbagbo] and CBG [Charles Blé Goudé] will exacerbate the current political and security tensions;
- iii. There is a high risk that the *in situ* hearing will lead to the mobilization of supporters of LG [Laurent Gbagbo] and CBG [Charles Blé Goudé] leading to violent demonstrations and unrest; [and]

¹² ICC-02/11-01/15-T-4-ENG ET, p. 60. l. 21 – p. 61, l. 4.

¹³ ICC-02/11-01/15-T-4-ENG ET, p. 60. l. 21 – p. 62, l. 7-8.

iv. Although a full-fledged resumption of violence is unlikely, isolated security incidents should be expected during and after the Presidential election.”¹⁴

22. The Prosecution notes that its risk assessment states, in relation to the risk of mobilisation of supporters of the Accused leading to violent demonstrations and unrest, that: “[t]his analysis remains valid in case the opening statement are organized in situ with the accused in The Hague and present via Video Link”.¹⁵

23. The Prosecution further recalls the Trial Chamber’s findings in its Ninth Decision on the review of Mr Gbagbo’s detention, dated 8 July 2015, in which the Trial Chamber found that the “further material provided by the Prosecution, particularly that supporting calls for release of Mr Gbagbo, a fact which is not refuted by the Defence, clearly illustrates the continued existence of Mr Gbagbo’s support network.”¹⁶ The existence of such a network carries with it obvious security risks.

24. From the logistical point of view, the Prosecution understands from the Registry’s submissions at the status conference on 25 September, that there is insufficient time to make the requisite arrangements towards a start date of 10 November.¹⁷

Arusha

25. The Prosecution opposes holding opening statements in Arusha. There are obvious logistical and financial issues involved in conducting hearings in Arusha – including in arranging to bring two accused persons from The Hague, together with the Parties, participants and various organs of the Court. These issues are not outweighed by any benefit to the communities affected. Indeed, holding opening statements

¹⁴ See Confidential Annex A.

¹⁵ See Confidential Annex A.

¹⁶ ICC-02/11-01/15-127-Red, para. 11 (footnotes omitted).

¹⁷ ICC-02/11-01/15-T-4-ENG ET, p. 59, l. 13-17.

in Tanzania would not bring the proceedings closer to, or otherwise benefit the affected victim communities in Côte d'Ivoire. Other than that Côte d'Ivoire and Tanzania are on different sides of the same continent, there is no apparent connection between the two States that would make hearings in Arusha more meaningful for the community in Côte d'Ivoire than hearings conducted in The Hague. There is no indication that hearings conducted in Arusha would appear to the community in Côte d'Ivoire to be more localised or closer to them than hearings conducted in The Hague.

26. The Prosecution does not advance any objections from the security point of view to holding *in situ* hearings in Arusha, although this is dependent upon the host nation of Tanzania providing adequate security measures, and the Tanzanian general elections, scheduled for 25 October 2015, running peacefully.¹⁸

27. Specifically on the issue of logistics, the Prosecution notes that the Registry requested in its preliminary views additional time to provide the Trial Chamber with their assessment, noting that there are “certain advantages logistically speaking” to holding hearings in Arusha, as compared to Abidjan.¹⁹

Site visit

28. As an alternative to holding the opening statements *in situ*, the Prosecution submits that a judicial site visit after the commencement of trial will have the beneficial effect both of assisting the Trial Chamber in evaluating the evidence, and increasing the visibility of these proceedings in Côte d'Ivoire – bringing the proceedings closer to the affected communities. Noting the Trial Chamber's request in this regard,

¹⁸ See Confidential Annex A.

¹⁹ ICC-02/11-01/15-T-4-ENG ET, p. 59. l. 18-21.

the Prosecution will file its submissions on the issue of a site visit early next week.²⁰

Conclusion

29. For the reasons above, the Request should be dismissed.



Fatou Bensouda, Prosecutor

Dated this 2nd day of October 2015

At The Hague, The Netherlands

²⁰ ICC-02/11-01/15-T-4-ENG, p.14, l. 9-12.