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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's submissions concerning a site visit

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. During the status conference of 25 September 2015, the Trial Chamber instructed the Parties and participants to make their submissions on scheduling an on-site visit, by way of a written filing.¹
2. The Prosecution requests that a judicial site visit be scheduled during the presentation of the Prosecution's case, after hearing the evidence of the first five Prosecution witnesses.
3. The Gbagbo Defence filed its "*Soumissions concernant les visites sur les sites*" on 1 October 2015.² The Prosecution notes the request made therein for three judicial site visits, at different stages in the case.³ The Prosecution does not oppose additional site visits taking place at a later stage of the trial, but at this early stage of the proceedings, reserves the right to make further submissions should the necessity of additional site visits arise.

Submissions

4. Subject to a detailed security assessment and adequate logistical arrangements, it is submitted that a judicial site visit would be beneficial to the evaluation of evidence in this case.

Applicable principles

5. The Prosecution takes note of the Gbagbo Defence Submissions and will not repeat the recognised applicable principles governing site visits at the ICC and at the *ad hoc* tribunals.⁴

¹ ICC-02/11-01/15-T-4-ENG ET, p. 14, l. 9-12.

² ICC-02/11-01/15-255-Red ("Gbagbo Defence Submissions").

³ Gbagbo Defence Submissions, paras. 52-56.

⁴ Gbagbo Defence Submissions, paras. 20-33.

Presence of the Accused

6. The Prosecution does not support a judicial site visit in the presence of the two Accused due to the logistical and security concerns their presence would present.⁵ The Gbagbo Defence Submissions are silent on this issue. The Prosecution notes that in the only ICC judicial site visit to date, the Accused were not present but rather were represented by their Counsel.⁶ Arrangements were made so that Counsel for both Accused could contact their clients by telephone during the visit.⁷ Further, there is a body of existing jurisprudence at the *ad hoc* tribunals on judicial site visits conducted without the accused's presence.⁸
7. In prior filings the Prosecution has already addressed the security concerns raised by the presence of an Accused on an on-site visit.⁹ Broadly, they include national security concerns for Côte d'Ivoire and personal security concerns for the two Accused and Court staff. First, the return of the Accused to the territory would likely exacerbate the existing current political and security tensions. Second, the Accused's presence and known whereabouts would likely lead to the mobilisation of supporters of Messrs Gbagbo and Blé Goudé and increase the risk of incontrollable public mass gatherings, turmoil and violence. Third, Messrs Gbagbo and Blé Goudé's personal security would be difficult to ensure and this could also increase the risk for Court staff present on the on-site visit.

⁵ See below, para. 7.

⁶ In the *Prosecutor v. Katanga and Ngujolo* case, the Trial Chamber conducted a site visit during which the two Accused were not physically present but were represented by Counsel. ICC-01/04-01/07-3235-Anx-Red (*Procès verbal de l'opération de transport judiciaire en République démocratique du Congo*).

⁷ ICC-01/04-01/07-3213-tENG, para. 11; ICC-01/04-01/07-T-334-Red-ENG WT, p. 42, l. 17-22.

⁸ See e.g., *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Site Visit, para. 12; *Prosecutor v. Nizeyimana*, ICTR-00-55C-T, Annex B to Decision on Site Visit, "Rules of Procedure and Conduct for the Site Visit in the Case of *Prosecutor v. Nizeyimana*", para. 1.

⁹ ICC-02/11-01/15-267; ICC-02/11-01/11-703-Red.

Locations to be visited

8. If the requested site visit is granted, the Prosecution submits that it should focus on the main locations at issue which are all in Abidjan and concentrated in the neighbourhoods of Adjamé, Abobo, Attécoubé, Cocody, Plateau, Port-Bouët and Yopougon. Contrary to the assertion of the Gbagbo Defence,¹⁰ such visit should not amount to visiting 104 locations.¹¹
9. A visit to the main locations at issue in the five charged incidents would enable the Chamber to visualise these locations, to appreciate the distances between the various locations, and to get a sense of the density and geographical layout of the city of Abidjan where all five charged incidents took place. If requested, the Prosecution can provide the Chamber with a list of the specific locations it submits should be visited.

Timing of requested site visit

10. The Prosecution submits that a judicial site visit to Abidjan at an early stage of the presentation of its case would greatly assist the Chamber's understanding and evaluation of the evidence to be adduced at trial.
11. As ordered by the Chamber, the Prosecution will provide a list indicating the first 20 witnesses it intends to call by 15 October 2015.¹² Among these, the first five witnesses will each speak to one of the five charged incidents. The Prosecution proposes a site visit immediately following the evidence of these witnesses.
12. The Prosecution submits that after having heard the first five witnesses, and accordingly the examination-in-chief and cross-examination of these witnesses relating to each of the five incidents, the Chamber will be better

¹⁰ See Gbagbo Defence Submissions, para. 18.

¹¹ The Gbagbo Defence implies that the Chamber must visit every location that may form part of the *chapeau* elements of article 7 of the Statute, see Gbagbo Site Visit Submissions, para. 18. The Prosecution submits that this is not necessarily the case and the main sites, relating to the five charged incidents, should be prioritised.

¹² ICC-02/11-01/15-205, para. 18.

positioned at that stage of the proceedings to appreciate and anticipate some of the issues presented in relation to each of the various locations relevant to the charged incidents. In addition, a judicial site visit after the presentation of a few witnesses will greatly assist the Chamber to evaluate the evidence to be adduced during the Prosecution's case and trial.

13. In terms of logistics, the Prosecution can provide the following preliminary guidance. The Prosecution estimates that the evidence of the first five witnesses will not exceed three weeks. As such, this would likely place the proposed judicial site visit during the first trial session. Further, the Prosecution currently expects that a visit to the various relevant locations in Abidjan would take between two to three days.
14. Finally, the Prosecution notes that the Gbagbo Defence team also asks for three additional judicial site visits at various stages of the trial.¹³ The Prosecution does not necessarily oppose additional site visits at a later stage of the trial, and reserves the right to make further submissions should the need for additional site visits arise.

¹³ Gbagbo Defence Submissions, paras. 52-56.

Conclusion

15. For the reasons stated above, the Prosecution requests that a judicial site visit be scheduled during the presentation of the Prosecution's case, after hearing the evidence of the first five Prosecution witnesses.



Fatou Bensouda, Prosecutor

Dated this 5th day of October 2015

At The Hague, The Netherlands