

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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TRIAL CHAMBER I

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

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ***

Public Document

**Response to Mr Gbagbo's "Demande à la Chambre de mesures de protection de
façon à permettre le travail d'enquête des équipes de Défense"
(ICC-02/11-01/15-223)**

Source: Office of Public Counsel for Victims

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

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I. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)¹ submits that Mr Gbagbo’s request to suspend the commencement of the trial because of his alleged inability to investigate (the “Request”)² must be dismissed.

2. The Defence does not substantiate the alleged risks that continuing its investigations in Côte d’Ivoire may pose to any individual involved in said activities or the obstacles potentially raised by Côte d’Ivoire or France to said investigations. The Defence’s request for secured telephones instead of making use of Citrix and the contention that the management by Court staff on the ground is not possible are equally overdue and unsubstantiated. Accordingly, the Defence’s decision to discontinue its investigations cannot have any impact or consequence on the date already set for the commencement of the trial.

II. Background

3. On 7 May 2015, Trial Chamber I (the “Chamber”) set 10 November 2015 as the date for the commencement of the trial.³

4. On 15 September 2015, Mr Blé Goudé submitted his observations on two security incidents suffered by members of his Defence team in Abidjan in April and June 2015 (the “Observations”),⁴ in order “[t]o justify more comprehensive future

¹ See the “Directions on the conduct of the proceedings” (Trial Chamber I), No. ICC-02/11-01/15-205, 3 September 2015, p. 24.

² See the “Demande à la Chambre de mesures de protection de façon à permettre le travail d’enquête des équipes de Défense”, No. ICC-02/11-01/15-223, 16 September 2015 (the “Request”).

³ See the “Order setting the commencement date for trial” (Trial Chamber I), No. ICC-02/11-01/15-58, 7 May 2015, para. 16.

⁴ See the “Public redacted version of “Defence Notification on Security Incidents”, 11 September 2015, ICC-02/11-01/15-216-Conf”, No. ICC-02/11-01/15-216-Red, 15 September 2015 (the “Observations”).

*discussions between the Parties and the Chamber to take place, in order to implement specific measures to ensure the protection of the Defence teams during their investigations”.*⁵

5. On 16 September 2015, Mr Gbagbo filed the Request.⁶

6. Pursuant to regulation 24(2) of the Regulations of the Court (the “Regulations”), the Legal Representative files her response to the Request.

III. Submissions

7. The Legal Representative submits that the Request is based on speculative, unfounded and contradictory arguments which, as such, cannot be taken into account for the purposes of rulings by a court of law. The Defence requests the adoption of measures to protect its right to conduct investigations and to protect its witnesses. However, the Request fails to substantiate the need to adopt any of said measures. As a consequence, the Defence’s request to suspend the start of the trial must also be dismissed.

8. The general argument provided by the Defence in support of the Request is that the “[c]e serait l’intérêt de nombreux protagonistes puissants de faire obstacle au travail de la Défense pour l’empêcher de révéler les dessous et les conséquences de la prise du pouvoir par Alassane Outtara en 2011”,⁷ a regime that the Defence intends to depict during the trial as non-democratic.⁸ Against this general background, the Defence argues that “[l]’insécurité dans laquelle opèrent les équipes de Défense dans la présente affaire interdit que puisse être mis en œuvre le droit qu’a l’Accusé de disposer des moyens et des facilités nécessaires à la préparation de sa Défense”,⁹ and refers to the need to obtain from the Court “[e]n fonction de la dangerosité du contexte, les moyens nécessaires à leur protection

⁵ *Idem*, para. 28.

⁶ See *supra* note 2.

⁷ See the Request, *supra* note 2, para. 7.

⁸ *Idem*, paras. 4 and 33.

⁹ *Ibid.*, para. 10.

[des équipes de Défense] *et au maintien de la confidentialité des échanges avec leurs interlocuteurs*”.¹⁰

9. Moreover, after providing a long exposé about its opposition to the charges proffered against Mr Gbagbo,¹¹ the Request claims that in the current political context it is “[p]robable qu’elles [les autorités ivoiriennes] *font tout pour bloquer les enquêtes de la Défense*”;¹² and argues that (i) the Defence cannot keep its activities confidential *vis-à-vis* the authorities in Côte d’Ivoire because “[l]es Autorités ivoiriennes *bénéficient des informations qui leur sont données par le centre français d’interceptions des communications situé à Abidjan*”,¹³ and that (ii) the context in Côte d’Ivoire is dangerous for the Defence.¹⁴

10. In this regard, the Legal Representative submits that the Defence does not provide any actual and concrete detail supporting the insecurity and the lack of means alleged in the Request. The Defence only refers to a security incident that is not necessarily connected to the Defence’s investigations, namely the incident suffered by Mr Blé Goudé’s associate counsel.¹⁵ In fact, the Defence of Mr Blé Goudé simply stated that “[i]t cannot be excluded that the two incidents reported above [including the incident mentioned in the Request] *are related to the present case*”.¹⁶ Furthermore, the Defence simply speculates about the danger of cyber-espionage it faces, based at most on public information not verified by other sources.¹⁷ In these circumstances, the Legal Representative argues that this aspect of the Request calls for its dismissal because it is speculative and unfounded.¹⁸

¹⁰ *Ibid.*, para. 16.

¹¹ *Ibid.*, paras. 17-37.

¹² *Ibid.*, para. 40.

¹³ *Ibid.*, para. 41.

¹⁴ *Ibid.*, para. 42.

¹⁵ *Ibid.*, para. 43.

¹⁶ See the Observations, *supra* note 4, para. 17. See also *idem*, para. 25.

¹⁷ See the Request, *supra* note 2, footnote 51.

¹⁸ See the “Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on ‘No Case to Answer’ Motions)” (Trial Chamber V(a)), No. ICC-01/09-01/11-1334, 3 June 2014, para. 39; and the

11. Moreover, the public character of the Request is inconsistent with the remedy sought from the Chamber to call on France and Côte d'Ivoire not to interfere with the Defence's investigations. If France and Côte d'Ivoire were actually an obstacle to the Defence's investigations, a public request to the Court to remind both States about the importance of said investigations would run against the Defence's interest because it would put said States on notice of the Court's vigilance, granting them the opportunity to take different measures to conceal their allegedly illegal activities. In other words, the publicity of the Defence's submission about the alleged interference by France and Côte d'Ivoire defeats its very purpose, further jeopardizing the rights that the Accused alleges may be violated. The Court has dismissed several requests in the past for this very reason.¹⁹

12. The Request is also inconsistent with the fact that the Defence did not have problems to conduct investigations in Côte d'Ivoire in the past.²⁰ In fact, the Defence has never reported difficulties of this nature until now. If the Defence actually faced or anticipated difficulties in the conduct of its investigations, it should have brought them before the Chamber as soon as they arose, or at least earlier than one month

"Decision on the defence request for a temporary stay of proceedings" (Trial Chamber IV), No. ICC-02/05-03/09-410, 26 October 2012, para. 95.

¹⁹ See the "Decision on the Defence's Application to Suspend the Proceedings" (Pre-Trial Chamber II, Single Judge), No. ICC-01/05-01/08-530, 18 September 2009, para. 16. See also the "Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 entitled 'Decision on the Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU'" (Appeals Chamber), No. ICC-01/04-01/06-2582 OA18, 8 October 2010, para. 61.

²⁰ See *e.g.* the "Requête de la Défense en report de l'audience de confirmation des charges prévue le 19 février 2013", No. ICC-02/11-01/11-390, 8 February 2013, para. 28; the "Requête urgente afin que soient suspendus les délais durant les vacances judiciaires", No. ICC-02/11-01/11-584, 20 December 2013, paras. 36-37, 39 and 41; the "Requête urgente afin que soient suspendus les délais durant les vacances judiciaires", No. ICC-02/11-01/11-669, 17 July 2014, paras. 38-39, 41 and 43; and the "Réponse de la Défense à la « Prosecution's Request for Partial Suspension of the "Order setting the commencement date of the trial and the time limit for disclosure" » (ICC-02/11-01/11-741)", No. ICC-02/11-01/11-745, 9 January 2015, para. 56.

before the start of the trial. From this perspective, the Defence fails to comply with the requirement of due diligence.²¹

13. For all the reasons mentioned above, the Defence's request to remind France and Côte d'Ivoire about the importance of the Defence's investigations must be dismissed.²²

14. The same reasons justify the dismissal of the Defence's request for secured telephones instead of making use of Citrix.²³ The Defence has been using Citrix for the last three years without complaint,²⁴ and does not provide substantial reasons to change the system on the eve of the trial. Moreover, this aspect of the Request may only be brought before the Chamber if the Registry disagrees with the Request.²⁵ In this regard, the Defence does not even inform the Chamber whether it has already commenced discussions with the Registry on the possibility to use secured telephones.

15. The Legal Representative provides the same response regarding the Defence's contention that the management by Court staff on the ground is not possible.²⁶ The Request fails to refer to a changed circumstance supporting this contention, is not accompanied by relevant evidence and could have been presented earlier before the

²¹ See the "Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 20 November 2009 Entitled 'Decision on the Motion of the Defence for Germain Katanga for a Declaration on Unlawful Detention and Stay of Proceedings'" (Appeals Chamber), No. ICC-01/04-01/07-2259 OA10, 12 July 2010, para. 54. See also the "Decision on 'Defence request to deny the use of certain incriminating evidence at the confirmation hearing' and postponement of confirmation hearing" (Pre-Trial Chamber I), No. ICC-01/04-01/10-378, 16 August 2011, paras. 18-19.

²² See the Request, *supra* note 2, paras. 50-51.

²³ *Idem*, para. 46.

²⁴ *Ibid.*, para. 44. It appears that the Defence did not complain in 2012, but simply noted that "[l]e seul accès à distance aux documents émanant de la Cour se faisant par l'intermédiaire du système citrix, il convient que chacun des membres de l'équipe dispose d'un ordinateur dédié sur lequel est installé ce système". See the "Requête de la Défense sur le champ de l'aide judiciaire", No. ICC-02/11-01/11-26-Red, 1 February 2012, para. 83.

²⁵ Regulations of the Court, regulation 83(4).

²⁶ See the Request, *supra* note 2, para. 49.

Chamber. The Defence only refers to potential risks for its investigations on the basis of a survey conducted three months ago on an unrelated topic.²⁷

16. Finally, the Legal Representative submits that the Defence's request to postpone the starting date of the trial must be equally dismissed.²⁸ As discussed *supra*, the arguments in the Request concerning the lack of security and of means to conduct investigations are not substantiated. Therefore there is no basis to revisit the decision setting 10 November 2015 as the commencement date for the trial,²⁹ a decision that is final.³⁰ In these circumstances, the Defence's decision not to investigate because of "*une obligation éthique*"³¹ cannot have any legal consequences on the proceedings.

IV. Conclusion

17. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to dismiss the Request.



Paolina Massidda
Principal Counsel

Dated this 6th day of October of 2015

At The Hague, The Netherlands

²⁷ *Idem*, para. 47.

²⁸ *Idem*, para. 54.

²⁹ See *supra* note 3.

³⁰ See the "Decision on Defence requests for leave to appeal the 'Order setting the commencement date for trial'" (Trial Chamber I), No. ICC-02/11-01/15-117, 2 July 2015.

³¹ See the Request, *supra* note 2, para. 53.