

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

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

Date: 13 October
2015

TRIAL CHAMBER I

Before:

**Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Bertram Schmitt**

SITUATION IN COTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLE GOUDE***

Public

Defence response to the “Prosecution’s Submissions concerning a site visit” (ICC-02/11-01/15-268)

Source: Defence of Mr Charles Blé Goudé

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

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I. Introduction

1. The Defence of Mr Blé Goudé (“Defence”) files the present response (“Response”) to the “Prosecution’s submissions concerning a site visit” (“Prosecution’s submissions”).¹ The Defence shall respond to the following three discrete issues which the Prosecution raised: (1) the timing of the judicial site visit(s), (2) the locations to be visited, and (3) the presence of Mr. Blé Goudé during such a visit.

II. Submissions

A. Applicable law

2. The Defence joins the submissions of the Defence of Laurent Gbagbo (“Gbagbo Defence”), on the law applicable to judicial site visits at the ICC,² and its arguments on the necessity of conducting such a visit in this case in particular.³

B. The timing of a judicial site visit

3. In its submissions, the Prosecution posits that a judicial visit after the examination and cross-examination of the first five witnesses would “greatly assist Trial Chamber I’s (“Chamber”) understanding and evaluation of the evidence to be adduced at trial.”⁴ The Defence submits that a visit at such a juncture would undermine the very purpose of a judicial site visit by creating a very limited and partial perception of the evidence, which would seriously detract from the Court’s mandate to discover the truth.
4. In *The Prosecutor v. Katanga*, in response to the parties’ submissions as to the timing of a site visit, the Single Judge stated that Trial Chamber II would have preferred to conduct two visits, one before the commencement of trial, and

¹ ICC-02/11-01/15-268.

² ICC-02/11-01/15-255-Red, paras. 20-33.

³ *Ibid.*, paras. 34-51.

⁴ ICC-02/11-01/15-268, para. 10.

one at the end of trial.⁵ Thus, the judges could have had an initial view of the locations, which would have informed their future appraisal of witnesses on the stand. Next, at the end of each party's case, the judges could have returned to the sites to verify specific points that arose during trial.⁶ However, for practical and financial reasons, the Single Judge concluded that only one site visit could take place, and emphasized that the Court would have to be prepared to receive all exculpatory evidence from the Defence before the visit.⁷ In the end, Trial Chamber II made its judicial site visit from 18 to 19 January 2012, nearly 2 months after the parties had presented their evidence.⁸

5. Like in *Katanga*, in the instant case, judicial site visits should be scheduled at a moment in the proceedings that best serves the Court's truth finding mission. Therefore, the Defence submits that the same justifications as in *Katanga* exist for scheduling a visit both before and after the parties' presentation of evidence for the reasons provided below.
6. Firstly, after having seen the various onsite locations in Abidjan before the start of the Prosecution's case, the Chamber would be better placed to appraise the Prosecution's evidence by relying on its first impression of the theatre of the alleged crimes. Secondly, similar to *Katanga*, a final judicial site visit would be indispensable to the judges' appraisal of the totality of the evidence because in its final deliberations, the Chamber would be in a position to visualize the layout of the buildings in addition to the geographical and topographical layout when assessing the plausibility of witness testimonies.
7. Additionally, the Defence joins the Gbagbo Defence's arguments that a second visit should be held after the Prosecution's case because: (1) it would

⁵ ICC-01/04-01/07-T-224-ENG, p. 47, lines 1-11.

⁶ See ICC-01/04-01/07-T-224-FRA, p. 44, lines 1-4.

⁷ ICC-01/04-01/07-T-224-ENG, p. 47, lines 1-11.

⁸ ICC-01/04-01/07-3436-tENG, para. 20.

allow the Defence to show the Chambers the sites it will present in its case, (2) it would “refresh” the judges' memory after having heard the entirety of the Prosecution's case, and (3) thus, the Chamber would be better placed to fully evaluate the probative value, reliability, and credibility of the evidence the Defence would adduce.⁹ Unlike in *Katanga* where the Prosecution only called 24 witnesses to testify, the instant case involves nearly six times that number, thereby meriting a second visit before the start of the Defence case.¹⁰ Thus, the Defence requests the Chamber to conduct a total of three visits, as described in the aforementioned paragraphs.

8. The Defence submits that the Prosecution's proposal would necessarily lead to a biased and fragmented perception of the five incidents. The Prosecution has itself admitted that this case, unlike other cases at the Court, is based on circumstantial evidence, and thus in order to meet its burden of proof it requires calling an unprecedented number of witnesses.¹¹ The Prosecution submitted that it wished to “provide a complete picture and ... to place its pieces of evidence in order for the Chamber to appreciate beyond a reasonable doubt or not this evidence, this case.”¹² In such circumstances, the Defence believes that an onsite visit following the testimonies of only 5 of the 138 witnesses, would necessarily provide the judges with a biased perception, which does not represent the reality of the events which allegedly took place at the specified locations.
9. Since the Prosecution has indicated that it is unable to prove its case with fewer witnesses, then the testimony of other witnesses testifying to the five incidents is not simply cumulative, but is essential, and should also be heard if

⁹ ICC-02/11-01/15-255-Red, paras. 54-55.

¹⁰ ICC-01/04-01/07-3436, para. 21.

¹¹ ICC-02/11-02/11-T-9-Red-ENG, p.39, lines 1-8.

¹² *Ibid*, p. 39, lines 6-8.

the Chamber determines that it will conduct a visit after the Prosecution has started to present its case.

C. Locations to be visited

10. The Defence submits that any judicial site visit should, at a minimum comprise the main locations in the five charged incidents.¹³ However, the Defence agrees with the Gbagbo defence that more time is needed to investigate other potential locations to be visited, especially in the context of this case, where the incidents allegedly took place in an urban environment, which will become an important issue during the course of trial. Therefore, the Defence would not be opposed to filing its submissions on specific locations to visit on 11 December 2015.¹⁴

D. Presence of the Accused

11. The Defence notes the Prosecution's security concerns regarding the possible presence of Mr. Blé Goudé during the site visit. The Defence observes that the Prosecution does not substantiate that the presence of Mr. Blé Goudé would necessarily exacerbate tensions in the country. In fact, Mr. Blé Goudé is dedicated to reconciling the much divided segments in Ivorian society.¹⁵ However, the Defence leaves it to the discretion of the Chamber to decide whether Mr. Blé Goudé's presence would be beneficial or serve the interests of justice.

RELIEF SOUGHT

In light of the foregoing, the Defence respectfully requests the Chamber:

¹³ As the Prosecution indicated in its submissions, this includes Adjamé, Abobo, Attecoubé, Cocody, Plateau, Port-Bouët and Yopougon.

¹⁴ See ICC-02/11-01/15-255-Red, paras. 58-63.

¹⁵ See Abidjan.net, "Colloque du Cojep / Mindaoudou félicite Blé Goudé pour sa contribution à la paix" available at : <http://news.abidjan.net/h/555626.html>.

to reject the Prosecution's proposal to conduct a judicial site visit after hearing the testimony of the first five witnesses, and instead grant the Defence's request to conduct three judicial site visits as described above; and

to allow the parties to make observations on the locations to be visited during a judicial site visit at a later stage in the proceedings.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Mr. Knoop', is centered within a rectangular box. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mr. Knoop, Lead Counsel and Mr. N'Dry, Co-Counsel

Dated this
13 October 2015
At The Hague, the Netherlands