

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-02/11-01/15
Date: 26 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

**Decision on the Gbagbo Defence Request to hold opening statements
in Abidjan or Arusha**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

Legal Representatives of Victims

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I ('Chamber') of the International Criminal Court ('Court' or 'ICC'), in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, with regard to Articles 3(3), 62, 64 and 68(1) of the Rome Statute ('Statute') and Rule 100 of the Rules of Procedure and Evidence ('Rules') issues the following 'Decision on the Gbagbo Defence Request to hold opening statements in Abidjan or Arusha'.

I. Procedural History

1. On 7 May 2015, the Chamber set the commencement date for trial, ordering that opening statements commence on 10 November 2015.¹
2. On 10 September 2015, the Chamber issued an order scheduling a status conference to be held on 25 September 2015.² In the order, the Chamber invited proposals from the parties and participants for any items they wished to add to the provisional agenda for the status conference.
3. On 21 September 2015, the defence team for Mr Gbagbo ('Gbagbo Defence') requested that the Chamber add an item to the agenda on the possibility of holding opening statements in Abidjan, Côte d'Ivoire or Arusha, Tanzania.³
4. On 25 September 2015, the Gbagbo Defence filed a written request to hold opening statements in Côte d'Ivoire or, alternatively, in Arusha, Tanzania ('Written Submissions').⁴ During the status conference held on that same day, it made further oral observations thereon ('Oral Submissions', collectively with its Written Submissions, 'Request').⁵

¹ Order setting the commencement date for trial, ICC-02/11-01/15-58, para. 16.

² Order scheduling a status conference and a hearing on detention, ICC-02/11-01/15-214.

³ Email from a Legal Assistant on the Gbagbo Defence to Trial Chamber Communications on 21 September 2015 at 16:00.

⁴ *Requête de la Défense afin que les déclarations d'ouverture du procès aient lieu en Côte d'Ivoire ou du moins en Afrique*, 24 September 2015 (notified on 25 September 2015) ICC-02/11-01/15-241.

⁵ Transcript of Hearing dated 25 September 2015, ICC-02/11-01/15-T-4-ENG, page 54, line 6 – page 55, line 22.

5. On 25 September 2015, the defence team for Mr Blé Goudé ('Blé Goudé Defence', and together with Gbagbo Defence, 'Defence') filed its observations on the Request ('Blé Goudé Observations'), indicating that it would not oppose holding opening statements in Abidjan or Arusha.⁶ Responses by the Office of the Prosecutor⁷ ('Prosecution' and 'Prosecution Response') and the Legal Representative of Victims⁸ ('LRV' and 'LRV Response') were filed on 5 and 6 October 2015, respectively.
6. On 14 October 2015, the République de Côte d'Ivoire ('Côte d'Ivoire' or 'State Representatives') filed its observations, opposing the Request ('Observations of the State Representatives').⁹
7. On 14 October 2015, the Registry filed its observations on the Request ('Registry Observations').¹⁰

II. Submissions

8. In the Request, the Gbagbo Defence submits that it would be in the interests of justice to hold opening statements in Côte d'Ivoire,¹¹ and that in their view, doing so would also contribute to the Court's goal of raising public awareness and outreach, noting that non-Governmental Organisations have previously reported on the benefits of holding trials *in situ*.¹² Concerning logistical issues,

⁶ Corrigendum to the "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*,'" (ICC-02/11-01/15-222), ICC-02/11-01/15-243-Corr. A corrigendum was filed on 28 September 2015, ICC-02/11-01/15-243-Corr.

⁷ 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), ICC-02/11-01/15-267.

⁸ Consolidated Response to Mr Gbagbo's Requests for *in situ* proceedings and for site visits (ICC-02/11-01/15-241 and ICC-02/11-01/15-255-Red) and to the Prosecution's Submissions on site visits (ICC-02/11-01/15-268), ICC-02/11-01/15-273.

⁹ *Observations de la République de Côte d'Ivoire sur la requête de la Défense afin que les déclarations d'ouverture du procès aient lieu en Côte d'Ivoire ou du moins en Afrique*, ICC-02/11-01/15-290.

¹⁰ Registry's observations on the « *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), ICC-02/11-01/15-292, with confidential *ex parte* annex (ICC-02/11-01/15-292-Conf-Exp-Anx). On 26 October 2015, the Registry filed a public redacted version of its annex (ICC-02/11-01/15-292-Anx-Red) ('Annex to Registry Observations').

¹¹ Request, ICC-02/11-01/15-241, paras 35-36, 46-48.

¹² Request, ICC-02/11-01/15-241, paras 39-45, 49-52.

security and financial considerations, the Gbagbo Defence observes that when the Court's Prosecutor previously visited Côte d'Ivoire, the Court was able to ensure effective and sufficient protective measures. The Gbagbo Defence considers, therefore, that measures could be implemented to ensure that the hearings take place in Abidjan without particular risk.¹³ It suggests, in the alternative, that if there are too many impediments to holding the opening statements in Abidjan, they could be held elsewhere in Africa, such as in Arusha, Tanzania.¹⁴

9. The Blé Goudé Defence states briefly in its Observations that it 'agrees with the principle of bringing all the victim communities of the Ivorian post-electoral crisis of 2010-2011 closer to the proceedings, and that such principle would be served by holding the opening statements in any location that is closer to them, such as Abidjan or Arusha'.¹⁵
10. The Prosecution asks the Chamber to dismiss the Request.¹⁶ In the view of the Prosecution, holding opening statements in either Abidjan or Arusha is neither desirable nor in the interests of justice because of, *inter alia*, the timing of the request and, for Abidjan, associated security issues.¹⁷ The Prosecution considers that any perceived benefit to bringing the proceedings closer to the victim communities would be outweighed by the security concerns, including the fact that *in situ* hearings could lead to violent demonstrations and unrest.¹⁸ In respect of holding the opening statements in Arusha, Tanzania, the Prosecution submits that, besides the fact that Côte d'Ivoire and Tanzania are on different sides of the same continent, there is no apparent connection

¹³ Request, ICC-02/11-01/15-241, paras 60-61.

¹⁴ Request, ICC-02/11-01/15-241, paras 66-69.

¹⁵ Blé Goudé Response, ICC-02/11-01/15-243-Corr, para. 1.

¹⁶ Prosecution Response, ICC-02/11-01/15-267.

¹⁷ Prosecution Response, ICC-02/11-01/15-267.

¹⁸ Prosecution Response, ICC-02/11-01/15-267, para. 21; and Annex to Prosecution Response, ICC-02/11-01/15-267-Conf-AnxA, page 3.

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.¹⁹ As an alternative, the Prosecution suggests that a judicial site visit after commencement of trial may serve similar aims as those referred to in the Request.²⁰

11. The LRV also opposes the Request, stating that 'in the present case and at this point in time, holding opening statements *in situ* is neither feasible nor desirable,' based on logistical and security considerations relating to holding the hearings in Abidjan.²¹ In its view, the Request 'aims mostly at providing a political tribune to the Accused under the guise of opening statements'.²² The LRV also submits that from the victim's perspective holding the proceedings in Arusha is equivalent to holding them in The Hague.²³

12. In the view of the State Representatives, it would pose an unfair burden on Côte d'Ivoire for it to be expected to make the arrangements necessary to hold opening statements *in situ* prior to the commencement date of trial, particularly in light of the fact that the Request was made seven weeks before the start of trial.²⁴ In their view, the presence of the accused in Côte d'Ivoire raises the spectre of public disorder and national security concerns.²⁵ They further consider that holding opening statements in Arusha would not serve the purposes of the arguments developed in favour of Abidjan²⁶ and submit that rejecting the Request would have no impact on the rights of the Defence.²⁷

¹⁹ Prosecution Response, ICC-02/11-01/15-267, para. 25.

²⁰ Prosecution Response, ICC-02/11-01/15-267, para. 28.

²¹ LRV Response, ICC-02/11-01/15-273, para. 2.

²² LRV Response, ICC-02/11-01/15-273, para. 5.

²³ LRV Response, ICC-02/11-01/15-273, para. 4.

²⁴ Observations of the State Representatives, ICC-02/11-01/15-290, paras 17-19.

²⁵ Observations of the State Representatives, ICC-02/11-01/15-290, para. 20.

²⁶ Observations of the State Representatives, ICC-02/11-01/15-290, para. 26.

²⁷ Observations of the State Representatives, ICC-02/11-01/15-290, para. 23.

13. In the Registry Observations, it is submitted that it is not feasible to hold the opening statements in either Abidjan or Arusha, due to the timing of the hearing coinciding with the presidential electoral period and the short timeframe available.²⁸ In its view, *in situ* proceedings may further trigger tensions in either country.²⁹ Further, the Registry submits that there is not enough time available to carry out a feasibility report, implement the necessary security measures and provide an estimation of costs before 10 November 2015.³⁰ The Registry estimates that a period of between one and four months, or more, would be needed to provide such a report and an estimation of costs.³¹ In relation to Abidjan, the Registry highlights the extensive security measures and agreements that would have to be implemented in order for *in situ* proceedings to take place there at any stage; such as the establishment of a clear legal framework.³²

III. Analysis

14. The Chamber firstly notes that this Request was filed only on 25 September 2015 – seven weeks before the scheduled commencement of trial on 10 November 2015. Given the considerable planning that would evidently be required to execute the Request, the Chamber considers that the Request could and should have been brought at an earlier juncture.

15. The Chamber acknowledges the importance and benefit of bringing the work of the Court closer to those affected by the case. However, in deciding pursuant to Rule 100 of the Rules whether it is in the interests of justice to hold hearings in a place other than the host State, this benefit must be balanced

²⁸ Annex to Registry Observations, ICC-02/11-01/15-292-Anx-Red, para. 37.

²⁹ Annex to Registry Observations, ICC-02/11-01/15-292-Anx-Red, paras 8, 10.

³⁰ Annex to Registry Observations, ICC-02/11-01/15-292-Anx-Red, paras 4, 12, 14, 19, 29-31 and 38.

³¹ Annex to Registry Observations, ICC-02/11-01/15-292-Anx-Red, para 38; Registry Observations, ICC-02/11-01/15-292, para. 3.

³² Annex to Registry Observations, ICC-02/11-01/15-292-Anx-Red, paras 28 – 31.

with other pertinent factors, including: (i) whether the potential host State would support the Request;³³ (ii) the security situation in either location, noting the submissions concerning the timing of commencement date in relation to the elections in Côte d'Ivoire;³⁴ (iii) ensuring the safety and well-being of the accused;³⁵ and (iv) the time and resources required to conduct all of the necessary arrangements attendant with holding proceedings in a State other than the host State, including, *inter alia*, whether the potential host State has concluded an Agreement of Privileges and Immunities of the International Criminal Court (APIC) with the Court.³⁶

16. The Chamber has carefully analysed the Registry Observations with regard to the abovementioned factors, as well as those of the parties, participants, and Côte d'Ivoire. The Chamber has paid particular regard to the security risks and logistical implications of holding the opening statements in Côte d'Ivoire, and to the argument that holding the opening statements in Arusha would not achieve the central purpose of bringing the trial closer to affected communities in Côte d'Ivoire. The Chamber therefore concludes that it cannot recommend that opening statements be held in either Abidjan or Arusha. This determination is without prejudice to the pending requests to hold site visits in Côte d'Ivoire.³⁷

³³ Observations of the State Representatives, ICC-02/11-01/15-290.

³⁴ Annex to Registry Observations, ICC-02/11-01/15-292-Anx-Red, paras 5 and 10; Prosecution Response, ICC-02/11-01/15-267, para. 21; Annex to Prosecution Response, ICC-02/11-01/15-267-Conf-AnxA, page 3; and LRV Response, ICC-02/11-01/15-273, para. 2; and Observations of the State Representatives, ICC-02/11-01/15-290, para. 20.

³⁵ Annex to Registry Observations, ICC-02/11-01/15-292-Anx-Red, paras 21-23 and 30.

³⁶ Annex to Registry Observations, ICC-02/11-01/15-292-Anx-Red, paras 4, 12, 14, 19, 28-31 and 38.

³⁷ *Soumissions concernant les visites sur les sites*, ICC-02/11-01/15-255-Conf; Prosecution's submissions concerning a site visit, ICC-02/11-01/15-268; Consolidated Response to Mr Gbagbo's Requests for *in situ* proceedings and for site visits (ICC-02/11-01/15-241 and ICC-02/11-01/15-255-Red) and to the Prosecution's Submissions on site visits (ICC-02/11-01/15-268), ICC-02/11-01/15-273; Defence response to the "Prosecution's Submissions concerning a site visit" (ICC-02/11-01/15-268), ICC-02/11-01/15-288.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DISMISSES the Request.

Done in both English and French, the English version being authoritative

A handwritten signature in black ink, appearing to read 'G Henderson', written over a horizontal line.

Judge Geoffrey Henderson, Presiding Judge

A handwritten signature in black ink, appearing to read 'Olga Herrera Carbuccion', written over a horizontal line.

Judge Olga Herrera Carbuccion

A handwritten signature in black ink, appearing to read 'Bertram Schmitt', written over a horizontal line.

Judge Bertram Schmitt

Dated 26 October 2015

At The Hague, The Netherlands