

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/11-01/15
Date: 12 January 2016

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

Public

Decision on requests concerning site visits

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'), in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 64, 69 and 74 of the Rome Statute ('Statute'), issues the following 'Decision on requests concerning site visits'.

I. Procedural history and submissions

1. Prior and during the status conference held on 4 November 2014 in *The Prosecutor v. Laurent Gbagbo* case ('Gbagbo case'), the parties and participants made submissions on the possibility to conduct site visits in the *Gbagbo* case.¹
2. On 11 March 2015, the Chamber decided to join the *Gbagbo* case and the case of *The Prosecutor v. Charles Blé Goudé*.²
3. During the status conference on 25 September 2015, in response to the request made by the defence for Mr Gbagbo ('Gbagbo Defence') and the Office of the Prosecutor ('Prosecution') that the issue of site visits be added to the agenda,³ the Chamber directed the parties to make submissions on this matter by way of written filing.⁴
4. On 1 October 2015, the Gbagbo Defence filed its submissions, requesting that three site visits be conducted during the proceedings: one before the Prosecution's presentation of evidence, one before the Defence's presentation of evidence and another one at the end of the parties' presentation of evidence.⁵ Relying on the jurisprudence of this Court and of the *ad hoc* tribunals, the

¹ *Observations de la Défense concernant l'ordre du jour de la conférence de mise en état prévue le 4 novembre 2014*, 27 October 2014, ICC-02/11-01/11-709-Red2; ICC-02/11-01/11-T-25-Red-ENG, pages 58-60.

² Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters, with public Annex A, ICC-02/11-01/15-1. See also ICC-02/11-01/11-810 and ICC-02/11-02/11-222.

³ See email from the Prosecution to the Chamber, on 21 September 2015 at 15.15; and email from the Gbagbo Defence to the Chamber, on 21 September 2015 at 16.00.

⁴ Transcript of hearing on 25 September 2015, ICC-02/11-01/15-T-4-ENG, page 14.

⁵ *Soumissions concernant les visites sur les sites*, ICC-02/11-01/15-255-Conf ('Gbagbo Defence Request'), paras 52-57. A public redacted version was filed on the same day (ICC-02/11-01/15-255-Red).

Gbagbo Defence submits that site visits are instrumental to the discovery of the truth, are in the interests of justice, and allow for a better understanding of the facts at issue.⁶ The Gbagbo Defence avers that such visits are needed in the present case: (i) in order to better understand the numerous and complex allegations, especially considering the number of incidents and locations mentioned in the pre-trial brief; (ii) to assess the credibility of witnesses and what the Prosecution's allegations are based on; and (iii) for the determination of the truth. It is submitted that site visits would not delay proceedings but would in fact speed up the process and allow for a more beneficial discussion of the issues at trial as all the parties would have a shared understanding of the relevant locations.⁷

5. On 5 October 2015, the Prosecution filed its submissions, stating that a judicial site visit would be beneficial to the evaluation of evidence in this case, and requesting that one site visit be scheduled during the presentation of its case, after hearing the evidence of the first five Prosecution witnesses.⁸ The Prosecution submits that such a site visit at an early stage of the presentation of its case would place the Chamber in a better position to appreciate and anticipate various issues related to the locations relevant to the charges, and would greatly assist the Chamber in its evaluation of the evidence to be adduced during trial. The Prosecution does not oppose additional site visits being carried out and reserves the right to make further submissions should the need for additional visits arise.⁹ It does however oppose a site visit in the presence of the two accused persons due to logistical and security concerns.¹⁰

⁶ Gbagbo Defence Request, ICC-02/11-01/15-255-Red, paras 16, 26-33; *see also* paras 47-51.

⁷ Gbagbo Defence Request, ICC-02/11-01/15-255-Red, paras 34-46.

⁸ Prosecution's submissions concerning a site visit, ICC-02/11-01/15-268 ('Prosecution Request'), paras 4, 10-15.

⁹ Prosecution Request, ICC-02/11-01/15-268, paras 10-14.

¹⁰ Prosecution Request, ICC-02/11-01/15-268, paras 6-7.

6. On 6 October 2015, the Legal Representative of Victims ('LRV') filed its submissions, stressing that a site visit will have 'a significant impact on the effective participation of victims in the proceedings', who would feel that their concerns are being properly acknowledged and that justice is being done. She also points out that victims previously expressed their interests in a site visit so that the Judges could understand fully the events that caused their suffering.¹¹ The LRV supports the holding of a site visit, preferably toward the middle or end of the Prosecution case, as the Chamber will be fully acquainted with the Prosecution's case by that time. She does not, however, oppose additional site visits in the future. Finally, the LRV shares the Prosecution's concerns and submits that, for security reasons, the accused persons' presence is not desirable.¹²

7. On 13 October 2015, the Blé Goudé Defence filed its observations, in which it joins the Gbagbo Defence's request to conduct three site visits,¹³ arguing that the Prosecution's proposal to have one visit after hearing the testimony of the first five witnesses should be rejected, as it would create a limited, biased and fragmented perception of the alleged events.¹⁴ With regard to the presence of the accused persons, the Blé Goudé Defence submits that the Prosecution has not substantiated its reasons for suggesting that the accused persons' attendance would exacerbate tensions in the country. It submits that Mr Blé Goudé is dedicated to 'reconciling the much divided elements in Ivorian society'. However, it 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.¹⁵ Like the

¹¹ 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 ('LRV Submissions').

¹² LRV Submissions, ICC-02/11-01/15-273, para. 24.

¹³ Defence response to the "Prosecution's Submissions concerning a site visit" (ICC-02/11-01/15-268), ICC-02/11-01/15-288 ('Blé Goudé Defence Request').

¹⁴ Blé Goudé Defence Request, ICC-02/11-01/15-288, paras 8-9 and page 7.

¹⁵ Blé Goudé Defence Request, ICC-02/11-01/15-288, para. 11.

Gbagbo Defence,¹⁶ the Blé Goudé Defence requests additional time to make proposals on locations to be visited.¹⁷

8. Upon instruction of the Chamber,¹⁸ the Registry, parties and participants engaged in *inter partes* consultations to the extent necessary to facilitate the Registry being able to provide detailed observations to the Chamber on the proposed site visits. Subsequent to consultations that took place on 20 October 2015, and on 30 October 2015, the Defence, Prosecution and the LRV submitted to the Registry their respective proposals concerning site visits.¹⁹
9. On 16 November 2015, upon the Chamber's instruction,²⁰ the Registry filed its observations,²¹ including a feasibility report (Annex 1), with a preliminary timeline and budget for the site visit,²² and the parties and participants' suggested locations to be visited.²³
10. The Registry considers the site visit to Abidjan to be 'feasible', albeit dependent on the official confirmation of the Ivorian government and its level of support.²⁴ It states that while preliminary contacts with the Ivorian government have already been made, a formal request can only be made once a number of parameters are defined and communicated to the States' authorities (the presence of the accused; the exact locations to be visited; the dates of the visit; and the number of participants).²⁵ With regard to the presence of the accused

¹⁶ Gbagbo Defence Request, ICC-02/11-01/15-255-Red, paras 60-62 and page 18.

¹⁷ Blé Goudé Defence Request, ICC-02/11-01/15-288, para. 10 and page 7.

¹⁸ Email from the Chamber to the Registry, on 13 October 2015 at 12.28.

¹⁹ Annex 1 to Registry Observations on Defence "Soumissions concernant les visites sur les sites" and "Prosecution's submissions concerning a site visit," 16 November 2016, ICC-02/11-01/15-344 ('Registry Observations'), ICC-02/11-01/15-344-Conf-Anx1.

²⁰ Email from the Chamber to the Registry, on 7 October 2015 at 16.31.

²¹ Registry Observations, ICC-02/11-01/15-344.

²² Annex 1 to the Registry Observations ('Annex 1') and Annex 1-C and Annex 1-D, respectively.

²³ Annexes 2, 3, 4, 5 and 6 to the Registry Observations.

²⁴ Annex 1, ICC-02/11-01/15-344-Conf-Anx1, paras 3, 42. In submitting its observations the Registry took into account the following parameters: (i) the sites to be visited are located in various neighborhoods of Abidjan; (ii) the site visit would last between 3 and 5 days; and (iii) no media presence and no interviews with the press; Annex 1, ICC-02/11-01/15-344-Conf-Anx1, para. 1.

²⁵ Annex 1, ICC-02/11-01/15-344-Conf-Anx1, paras 3-5, 11, 40, 42.

persons, the Registry recommends, in light of the security situation and the potential political impact, that the site visit takes place in their absence.²⁶

11. While setting out the following next steps, the Registry indicates that it will further consult with the parties and participants to discuss locations and an itinerary, and thereafter submit a report to the Chamber. The Registry indicates that consultations with the State authorities may take one to three months. In addition, the Registry informs the Chamber that it will carry out a reconnaissance mission to gather information on a possible site visit, at which the Ivorian authorities could be invited to participate and to provide observations in order to facilitate the preparation of the site visit. The Registry states that, upon approval and depending on the support provided by the Ivorian authorities, it will conduct a preparation mission on the ground seven to eight weeks before any actual site visit, culminating in a final report to the Chamber which provides specific actions and measures to be put in place in order to carry out the site visit.²⁷

II. Analysis

12. There is no provision in the Statute or the Rules of Procedure and Evidence explicitly providing for the possibility to conduct a site visit. However, a chamber may decide to conduct a site visit pursuant to Articles 64, 69 and 74 of the Statute where such a visit may assist the Chamber in its assessment of the evidence.²⁸ A chamber therefore enjoys discretion in deciding whether to conduct a site visit, the utility of which must be assessed in view of the particular circumstances of the case.

²⁶ Annex 1, ICC-02/11-01/15-344-Conf-Anx1, para. 3.

²⁷ Annex 1, ICC-02/11-01/15-344-Conf-Anx1, paras 5, 40, 43-45.

²⁸ See, for example, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the judicial site visit to the Democratic Republic of the Congo, 1 December 2011, ICC-01/04-01/07-3213-tENG. See also, *The Prosecutor v. Germain Katanga*, Judgment pursuant to article 74 of the Statute, 7 March 2014, ICC-01/04-01/07-3436-tENG, paras 106-108.

13. The Chamber takes note of the parties' and participant's submissions on the purpose of conducting one or more site visits in the present case. It considers that a site visit may provide the Chamber with the opportunity to obtain a first-hand impression of the locations relevant to the charges, to enhance its understanding of the alleged events, and to be in a better position to assess the evidence presented during trial. The Chamber notes that the parties and participants propose to visit sites located in various neighbourhoods in Abidjan. With regard to the presence of the accused persons the Chamber notes that the Gbagbo Defence did not address this issue, and that the Blé Goudé Defence has left the decision in the discretion of the Chamber. It further notes the concerns expressed in particular by the Registry, and that other chambers have conducted site visits without the presence of the accused persons.²⁹

14. In order for this Chamber to properly assess whether a site visit would be feasible in the circumstances and of material assistance for the purpose of its evaluation of the evidence, the Chamber considers it appropriate to defer the decision on any such visit to a later stage of the proceedings, after having heard the evidence, given its view that such visit would, if ordered, be more appropriately conducted after the conclusion of the presentation of evidence by the Prosecution.

²⁹ See for example, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the judicial site visit to the Democratic Republic of the Congo, 1 December 2011, ICC-01/04-01/07-3213-tENG; ICTY, *The Prosecutor v. Goran Hadžić*, Decision on site visit, 4 June 2013, IT-04-75-T; ICTY, *The Prosecutor v. Radovan Karadžić*, Decision on second site visit, 10 February 2012, IT-95-5/18-T.

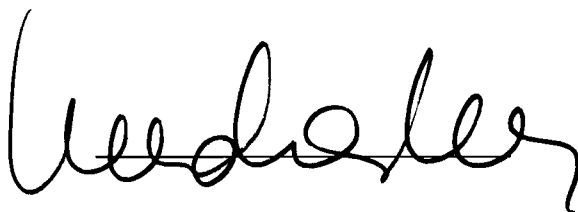
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS, in part, the Gbagbo Defence Request and the Blé Goudé Defence Request to conduct a site visit before the Prosecution's presentation of evidence;

REJECTS the Prosecution Request to conduct a site visit after the examination of the first five Prosecution witnesses; and

DEFERS its decision on the remainder of the Requests.

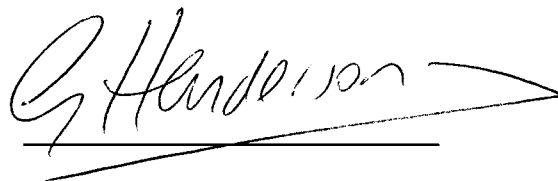
Done in both English and French, the English version being authoritative



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated 12 January 2016

At The Hague, The Netherlands