

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **6 May 2016**

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccia
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

Public redacted version of "Prosecution's Reply to *"Réponse de la Défense à la 'Prosecution Application for [REDACTED] to give testimony by means of video technology'"* (ICC-02/11-01/15-490-Conf), 6 May 2016

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. The Prosecution hereby files its reply to the Gbagbo Defence response¹ ("Response") to the Prosecution's application² ("Application") for the testimony of [REDACTED] be heard by means of video technology.³ The Trial Chamber granted⁴ the Prosecution's motion seeking leave to reply⁵ ("Leave to Reply").

Submissions

2. The Prosecution notes that the Gbagbo Defence does not raise, in principle, an objection to the testimony of [REDACTED] *via* video technology.⁶
3. The Prosecution requested that [REDACTED] be heard by video technology from [REDACTED]. The Prosecution sought this mode of testimony in light of several medical conditions and physical limitations of the Witness. For this reason, the Prosecution advises against an extended form of video-link testimony in the presence of the Parties and participants in [REDACTED] as proposed in the Response at paragraph 20. Amongst other physical ailments, the Witness suffers from [REDACTED]. This assessment is based on consultations with the Victims and Witnesses Section which has underlined the seriousness of [REDACTED] health condition and the risks of aggravating the Witness's condition in situations of increased pressure.⁷ The Prosecution sees no reason to incorporate in the video-link a procedure which would include the presence of the Parties at the location of the Witness' testimony. The Parties will be on an equal footing, having to put their questions to the Witness remotely, as with any standard testimony *via* video technology. To alleviate concerns that the Witness may not feel compelled to

¹ ICC-02/11-01/15-490-Conf.

² ICC-02/11-01/15-486-Conf.

³ Pursuant to article 69(2) of the Rome Statute ("Statute") and rule 67(1) of the Rules of Procedure and Evidence ("Rules").

⁴ Email from Trial Chamber I Communications to the parties and participants on 3 May 2016 at 12:37.

⁵ ICC-02/11-01/15-492-Conf.

⁶ Response, para.18.

⁷ It is expected that the Victims and Witnesses Section will inform the Chamber accordingly *via* an *ex parte* filing.

answer candidly, the Chamber is in a position to issue a reminder to the Witness during the course of his testimony. The Chamber may remind the Witness of his solemn oath, his obligation to give evidence truthfully as well as the possibility of being held in contempt if it is found that the Witness interfered with the administration of justice by giving false testimony.

4. The Gbagbo Defence seeks additional measures if the Chamber grants the Application. At paragraph 21 of the Response, the Defence seeks an order to prevent all contacts with the Witness to avoid any preparation by the Prosecution. This order and reminder is unnecessary. The Prosecution is fully aware of the Chamber's decision barring witness preparation and any further order is consequently not necessary. The fact that a Witness gives evidence *via* video-link does not alter this obligation.
5. With respect to the request for a "courtesy visit" as requested at paragraph 22, nothing indicates that the Registry is expecting to deviate from standard practise, notwithstanding a witness' mode of testimony. As such, courtesy meetings are expected to take place *via* video-link prior to the commencement of the Witness' testimony. Should an extended video-link take place in the presence of the Parties, the Prosecution trusts that the Registry would adopt the appropriate measures to organise the courtesy meeting.
6. Finally, the Prosecution notes that paragraph 23 of the Response raises the issue of the quality of the video technology and its impact on the rights of the Defence. It is submitted that this is a concern for all involved: the Chamber, the Prosecution, the Defence and the participants. As such, any disruption or malfunction of the video technology do not affect the rights of the Defence alone, but the proper administration of justice and the accurate recording of a Witness' testimony. It is expected that the Registry will facilitate a video-link of the highest possible quality.

Conclusion

7. For the foregoing reasons, the Prosecution requests that the Chamber allows [REDACTED] to testify by means of video technology as requested in the Application. The Prosecution does not see the necessity for the Parties and participants to be present at the location from where the Witness is expected to give evidence.



Fatou Bensouda, Prosecutor

Dated this 6th day of May 2016

At The Hague, The Netherlands