

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: French

No.: ICC-02/11-01/15
Date: 22 February 2016

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Geoffrey Henderson
Judge Olga Herrera-Carbuccia

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

Public Document

Request for leave to appeal the Trial Chamber's oral decision of 12 February 2016

Source: Defence Team for Laurent Gbagbo

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

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Counsel for the Defence of Laurent

Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Counsel for the Defence of Charles Blé

Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'Dry

Legal Representative of Victims

Ms Paolina Massidda

Legal Representative of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman Von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Background

1. On 4 November 2015, without an *inter partes* debate, the Presiding Judge of the Trial Chamber informed the Defence for Laurent Gbagbo that:

It is also important to mention this at the outset. These proceedings are against Mr Gbagbo in his personal capacity. In those circumstances, this Chamber does not consider the use of the title “President” appropriate in filings in this case as appears to be the practice. The Chamber therefore invites you to – and invites the Gbagbo Defence team – to refrain from using the title.¹

2. On the same day, Counsel for the Defence made the following comment before the Chamber:

[TRANSLATION] I would like to seize this opportunity, your Honour, to point out that there may be some kind of cultural misunderstanding in this instance, because in French, a former Head of State is referred to by that honorary title, and it does not have any specific political implications. I know there were some doubts expressed but it has nothing to do with whether or not he recognises an electoral defeat. Nothing at all. It is a way of introducing a former Head of State. In France, for example, we refer to President Chirac and President Sarkozy. It has no specific political implication.²

3. The Presiding Judge replied: “So I take your point, but we will – we will discuss it afterwards [...].”³ Nevertheless, the issue was not addressed again until February 2016 and, as a result, there was no adjudication.
4. On 11 February 2016, as he prepared to proceed with his cross-examination, Counsel for Laurent Gbagbo introduced himself to Witness P-442 as follows: “[TRANSLATION] Good morning, Witness. My name is Emmanuel Altit, I am Counsel for President Gbagbo.”⁴
5. On the same day, after the conclusion of Witness P-442’s cross-examination – and before the next witness was led into the courtroom – the Legal Representative of Victims addressed the Chamber as follows:

¹ ICC-02/11-01/11-T-25-CONF-ENG, p. 6, lines 4-8.

² ICC-02/11-01/11-T-26-CONF-EXP-FRA, p. 5, line 25, to p. 6, line 4.

³ ICC-02/11-01/11-T-26-CONF-EXP-ENG, p. 5, lines 23-24.

⁴ French transcripts of the hearing of 11 February 2016, p.12, lines 1-2.

[TRANSLATION] This morning, when my learned colleague, Mr Altit, took the floor to question the witness, he uttered these words – and I am reading from the French transcript, page 12, line 2, in French: “[TRANSLATION] My name is Emmanuel Altit. I am Counsel for President Gbagbo.” (Speaks English) I’d like to ask the Chamber to kindly request my colleague to refrain from using the term “president” in this Court.⁵

6. Counsel for Laurent Gbagbo responded that (1) the issue at hand did not concern the personal interests of victims and (2) not addressing Laurent Gbagbo by his title of “President”, to which he was culturally entitled and which had no political implication whatsoever, would amount to an act of humiliation, even more so as he is presumed to be innocent.
7. On 12 February 2016, the Chamber urged the Defence team “to refrain from using the title ‘president’” when addressing Mr Gbagbo.⁶

II. **Discussion**

Introduction:

8. In most cultures with a Latin background, such as the French and the Ivorian – the Ivorian culture being the heir of French culture in that regard – it is accepted practice to address a person by his or her title when he or she has played an important social role. This concerns the highest ranking offices in the country, in particular, and positions of responsibility, in general. Accordingly, someone may be addressed as “President X” or “General Y” even after his or her official tenure of office has ended. This is not only to honour the person but also to recall the eminent role he or she has played, highlighting the fact that it was a socially important position. In other words, the way in which someone is addressed reflects the history of a society and the choices made by its members.

⁵ French transcripts of the hearing of 11 February 2016, p. 54, lines 12-24.

⁶ English transcripts of the hearing of 12 February 2016, p. 31, line 11.

9. It should be noted that, although this is less common in some cultures, it is an almost universal tradition for former Presidents of countries to be addressed using their title, e.g. in the United States.
10. There are immediate implications of refusing to allow Laurent Gbagbo to be addressed as “President Gbagbo”: since, from a cultural perspective, addressing him as President is natural and normal, it is unnatural and abnormal not to address him as President. In other words, whereas allowing Laurent Gbagbo to be addressed in Court as “President Gbagbo” has no impact and is in keeping with cultural practice, there is profound significance in preventing him from being addressed as President, as the Bench is reversing a natural process and, in so doing, is sending the world the following message: according to them, Laurent Gbagbo does not “deserve” to be addressed as President. Whereas addressing Laurent Gbagbo as “President Gbagbo” is not a political statement, refusing to address him as “President Gbagbo” is.
11. It should be noted in this regard that the Pre-Trial Chamber never engaged in such a discussion because allowing Laurent Gbagbo to be addressed in Court by Counsel and other participants as “President Gbagbo” had no impact on its proceedings.
12. It should also be noted that the impugned decision also affects the manner in which Counsel and any other participant in proceedings, such as witnesses, address Laurent Gbagbo in Court. Nothing prevented the Bench from considering Laurent Gbagbo as an individual, from its perspective – and addressing him accordingly as Laurent Gbagbo – while allowing participants the freedom to comply or not comply with their cultural traditions. That was the choice made by the Pre-Trial Chamber.
13. The issue at hand, therefore, is not whether the Bench – and hence the Court as whole – should address Laurent Gbagbo as “President Gbagbo”, as the Pre-Trial Chamber’s practice in this connection could be adopted. Rather, the

issue is whether the Bench has the right to prevent Counsel and participants in proceedings from addressing him as “President Gbagbo”, whereas, clearly:

- it is not within its jurisdiction, as it has no impact on proceedings; and
- it runs counter to a strong and almost universal tradition, an act that can be interpreted and perceived as nothing but deliberate humiliation resulting from prejudice, i.e. that can be understood only as passing premature judgement. This is all the more striking as the Accused is presumed innocent.

14. Lastly, not addressing Laurent Gbagbo as “President Gbagbo” could give the impression that the Chamber is questioning the legitimacy of Laurent Gbagbo’s election to the Presidency of the Republic in October 2000. In fact, that was the thrust of the submission of the LRV, who, in going along with the Prosecution’s position, appeared to question the presidential election of October 2000. Yet the legitimacy of the election was never doubted by anyone, and Laurent Gbagbo was considered by his peers not only to be the elected President of Côte d’Ivoire, but also to be the first President representing a true democratic alternative since independence. In appearing to concur with the line of reasoning of the LRV and the Prosecution, the Bench is adopting a position akin, according to some, to political revisionism, which is all the more surprising as only the LRV and the Prosecution seem to question the October 2000 election for the purposes of their narratives.

15. The consequence of the Bench’s position: giving the impression that it concurs with the reasoning of the LRV and the Prosecution ultimately amounts to casting doubt on the Ivorian people’s choice in October 2000, their freedom to choose their leaders. It only substantiates the widespread suspicion – especially in Africa – that Africans are being dispossessed of their history and suffering.

1. Appealable issues

1.1 The LRV had no standing to act in requesting the Chamber to order the Defence team for Laurent Gbagbo to refrain from addressing him as “President”

16. The impugned decision was adopted following a request made by the LRV. The Defence, however, contends that the LRV had no capacity to act in making such a request.

17. Let us recall that the LRV is not a party to the proceedings. The LRV is no more than a participant who can present views and concerns only where the interests of the victims are affected and solely where the Bench considers it appropriate.⁷ Therefore, before making the request, the LRV should have demonstrated how the interests of victims whom she represents might be affected by the issue raised and only then have been granted – following an *inter partes* debate – the Chamber’s explicit authorisation to raise the issue. Only at that time should the Chamber have made a ruling.

18. At no time, however, did the LRV demonstrate when she intervened how the interests of the victims she represents might be affected by the fact that Laurent Gbagbo’s Counsel or other participants in the proceedings address him as “President Gbagbo”, nor did she request the Chamber’s authorisation to intervene.

⁷ Article 68(3) of the Statute.

19. The fact that the Chamber granted the LRV's request, whereas she had no standing to make that request and did not respect the procedure, nullifies the impugned decision.

1.2 The Chamber provided no legal basis for its decision

20. In his oral decision, the Presiding Judge provided no legal basis for forbidding the Defence team for Laurent Gbagbo from using the title "President".

21. The Bench renders decisions within limits laid down by the Statute and the Rules of Procedure and Evidence. Yet there is no provision in either text under which the Bench can decide how an accused person may be addressed in Court by his or her Defence team and other participants. It should be recalled that, from a cultural perspective, not addressing Laurent Gbagbo as "President Gbagbo" is considered disrespectful.

22. By issuing a ruling of this kind the Bench is interfering in the Counsel-client relationship, compelling Counsel to refrain from publicly showing their client due respect commensurate with his past office. Interference of this kind is unacceptable unless a sound legal basis is provided.

23. Accordingly, the lack of a legal basis renders the impugned decision invalid.

1.3 The Chamber erred in fact when it considered that it would be necessary to refrain from using the title "President" in order to "calm the atmosphere down"

24. In the impugned decision, the Chamber considered that "it's a matter of trying to be balanced and to keep the whole atmosphere a little bit – one could be interpreted in a false way"⁸.

25. However, the Chamber did not specify who could misinterpret the words. It should be noted that the prime observers of the trial, Ivorians, are fully

⁸ English transcripts of the hearing of 12 February 2016, p.31, lines 8-10.

aware that the title “President” is an honorary title for any former President of the Republic of Côte d’Ivoire. Anyone following the Ivorian press – irrespective of its political leaning – can see that no observer has detected any hidden political message in the use of the title “President”. In fact, as this is a cultural tradition, Laurent Gbagbo is addressed as “President Gbagbo” by his political opponents as well. In their view, it is a self-evident cultural practice and a form of respect towards Ivorian citizens.

26. In fact, the Defence notes that, out of the four Prosecution witnesses who have appeared thus far, two used the expression “[TRANSLATION] President Gbagbo,”⁹ even though they acknowledged their support for Alassane Ouattara.

27. It is important for the Bench to understand how Ivorians think, as clearly demonstrated by P-398, a Prosecution witness, who said: “[TRANSLATION] The day of *President Gbagbo’s* arrest was a Monday, and they entered my neighbourhood on Tuesday. I say “*President*” *Gbagbo* because he was the first President and I owe him due respect.”¹⁰

28. In view of the above, requiring that the Defence refrain from addressing Laurent Gbagbo as “President Gbagbo” in order to “calm the atmosphere down” amounts to an error of fact which renders the impugned decision invalid.

1.4 The Bench’s decision will sow confusion in the minds of witnesses

29. Laurent Gbagbo is charged before this Court with crimes he allegedly committed as President of the Republic of Côte d’Ivoire. The Prosecution’s allegations about his role as Head of the armed forces prove this. So how will questions be put to witnesses and how will they answer if neither the person

⁹ French transcripts of the hearing of 5 February 2016, p. 29, lines 22 and 25; French transcripts of the hearing of 9 February, p.11, line 11; French transcripts of the hearing of 11 February, p. 64, line 16.

¹⁰ CIV-OTP-0049-2842-R02, para. 50.

putting the questions to the witness nor the witness can use the term “President” Gbagbo? This amounts to preventing them from testifying to the Court about their perception of how institutions functioned and their place in the command chain at the time.

30. Such confusion only causes delay in the proceedings and compromises the fairness of the trial.

2. The need to appeal at this stage

31. The impugned decision undermines the respect to which Laurent Gbagbo is entitled in cultural terms, not as an individual but as a former President, and as a result it adversely affects the people of Côte d’Ivoire, whom he represented as Chief Executive. At best, this decision reveals lack of understanding of a culture – and from that perspective raises the issue of understanding of the cultural context of the instant case – and, at worst, it reveals prejudice.
32. The position taken by the Bench is all the more regrettable as it could be regarded as bias against Laurent Gbagbo.
33. Whatever the perspective, the impugned decision has immediate consequences on the continuation of proceedings as it amounts to interference by the Bench in the relationship between the Accused and his Counsel, reduces Counsel’s latitude – in particular when they come to put questions to witnesses and could sow confusion in the minds of witnesses.
34. Above all, by giving the impression of supporting the views of the LRV and the Prosecution and of challenging historical fact, it casts doubt on the fairness of the proceedings.
35. Lastly, by adopting the impugned decision following a request of the LRV, without due respect for the process laid down in the Statute, and without

ascertaining the victims' standing, the Chamber *de facto* acknowledged the LRV as a quasi-party, thereby constituting it as a third party alongside the Prosecution and the Defence, and running the risk of a second Prosecution emerging. The Appeals Chamber must, therefore, remedy the impugned decision immediately if it is to avoid a situation where the very balance between the Defence and the Prosecution provided for by the Statute is upset and the fairness of the trial is irretrievably undermined.

36. Accordingly, the Appeals Chamber's immediate resolution of the issues raised, through a definitive response, would rid the judicial process of any defects that could affect the fairness of the proceedings or compromise the outcome of the trial.¹¹ Should a decision on the matter be delayed until such a time as any judgment is appealed against, and should that decision be in favour of the Defence, there might be no adequate remedy at such a late stage in the proceedings.

FOR THESE REASONS, MAY IT PLEASE TRIAL CHAMBER I:

Mindful of article 82(1)(d) of the Statute, rule 155(1) and regulation 65, to

- To GRANT the Defence leave to appeal the impugned decision.

[signed]

Emmanuel Altit

Lead Counsel for Laurent Gbagbo

Dated this 22 February 2016

At The Hague, the Netherlands

¹¹ ICC-02/04-177.