

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/11-01/15
Date: 27 November 2017

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 the Prosecutor's urgent application for testimony by means of video-link technology and for additional special measures with respect to Witness P-0554

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Eric MacDonald

Counsel for Mr Laurent Gbagbo

Emmanuel Altit

Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Geert-Jan Alexander Knoops

Claver N'dry

Legal Representatives of Victims

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

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I (“Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Article 67(1)(e), 68(1) and (2), and 69 of the Rome Statute (“Statute”) and Rules 67, 87 and 88 of the Rules of Procedure and Evidence (“Rules”), issues this decision on the “Prosecution’s urgent application for testimony by means of video-link technology and for additional special measures with respect to Witness P-0554”, filed on 17 November 2017.¹

1. Responses to this application were received from the Defence of Charles Blé Goudé on 21 November 2017² and from the Defence of Laurent Gbagbo on 22 November 2017³.
2. The Prosecutor requests the Chamber (i) to authorise P-0554’s *viva voce* testimony by means of video-link technology from a remote location (“First Request”) and (ii) to grant special measures in the form of reading assistance, adapted questioning and the presence of a psychologist next to the Witness during her testimony (“Second Request”).

On the Prosecutor’s First Request

3. The Prosecutor seeks, for Witness P-0554, “subject to the views of the VWU”, special measures under Rule 88(1) of the Rules in the form of reading assistance, adapted questioning, and the presence of a psychologist during the testimony.⁴
4. The Defence of Charles Blé Goudé does not oppose the First Request.⁵
5. The Defence of Laurent Gbagbo opposes the First Request, stating that the elements relied upon by the Prosecutor fail to adequately substantiate it.⁶ More specifically, the

¹ ICC-02/11-01/15-1070-Red.

² ICC-02/11-01/15-1074-Conf.

³ ICC-02/11-01/15-1075-Conf.

⁴ ICC-02/11-01/15-1070-Conf, paras 9-10.

⁵ ICC-02/11-01/15-1074-Conf, para. 2.

Defence for Mr Gbagbo submits that (i), while the request should have been filed at an earlier stage, since the information relied upon by the Prosecutor was already available at the time of her request for protective measures, it does not oppose the granting of the measure of reading assistance if such measure is recommended by the VWU;⁷ (ii) that the measure of the presence of a psychologist during the testimony cannot be ordered without ordering a psychological assessment of the Witness; should psychological assistance be recommended as a result of this assessment, the psychologist's interaction with the witness should be limited and strictly authorised by the Chamber on a case-by-case basis, with a view to avoiding that the psychologist's intervention result in the witness being allowed not to answer questions essential to the determination of the truth;⁸ (iii) the measure of adapted questioning would result in restricting the Defence's right to question the witness and her credibility⁹.

6. The Chamber notes that, with a view to enabling the preparation of the parties, the witnesses concerned and the Registry for the upcoming testimony, this decision is taken without the Witnesses and Victims Unit (VWU) having yet provided to the Chamber its advice as to the need for special measures for Witness P-0554. In the assessment of the Chamber, this advice is not indispensable in this particular instance and the requested special measures can be decided on the basis of the information currently available. Decisions as concerning protective and special measures are always subject to review if relevant new or additional information becomes available.

⁶ ICC-02/11-01/15-1075-Conf, para. 8.

⁷ ICC-02/11-01/15-1075-Conf, paras 12-13.

⁸ ICC-02/11-01/15-1075-Conf, paras 14-15.

⁹ ICC-02/11-01/15-1075-Conf, para. 16.

7. The Chamber recalls that Witness P-0554 has already been granted the measure of having her testimony heard in camera¹⁰ and considers that, in light of her personal circumstances and the subject matter of her testimony, the requested special measures may benefit Witness P-0554, while having no adverse impact on the rights of the parties and participants, in particular of the accused.
8. As regards the special measure of the presence of the psychologist, recent experience with other witnesses benefiting from such assistance shows that the psychologist's role is strictly limited to supporting the witness's well-being if and when required and that the psychologist's intervention, if any, always occurs under the strict control of the Chamber. Accordingly, no issue of interaction with the witness on the merits or the testimony or of any other kind of interference vis-à-vis the defence's line of questioning arises. As to the request by the Defence for Laurent Gbagbo, that a preliminary psychological assessment be carried out, the Chamber notes that a professional assessment will be carried out by the expert psychologists of the VWU shortly before the testimony is due to start, in accordance with the usual practice.
9. As regards the special measure of "adapted questioning", and as already stated,¹¹ the Chamber considers that the granting of this measure does not interfere with the rights of the accused and does not anyhow restrict or otherwise affect the Defence's ability to question the witnesses or the scope of the allowed questioning. Its effect is simply a reiteration of the Chamber's expectation from counsel to be mindful of the needs of individual witnesses during questioning.
10. Accordingly, the special measures under Rule 88(1) of the Rules are granted. Variations of these special measures will be ordered if necessary after the relevant reports are received by the Chamber from the VWU.

¹⁰ ICC-02/11-01/15-1060, paras 15-21.

¹¹ ICC-02/11-01/15-1060, para. 28.

On the Prosecutor's Second Request

11. The Prosecutor requests that Witness P-0554 testify by video-link for practical reasons, namely in light of the need to ensure that Witness P-0554 is able to testify at the scheduled time in spite of not yet having obtained the relevant travel documents.¹²
12. Both the Defence for Mr Blé Goudé and the Defence for Mr Gbagbo oppose the Prosecutor's Second Request.
13. The Defence for Laurent Gbagbo submits (i) that the measure of testimony by video-link cannot be justified on the basis of difficulties of a logistic nature, such as failure to receive travel documents allowing a witness to come to the seat of the Court in accordance with the envisaged schedule¹³ and (ii) that, in order to preserve the rights of the defence to question the witness under the best possible conditions, this scenario should rather be remedied by postponing the testimony to a later stage.¹⁴ For the event that the Chamber authorises testimony by video-link, the Defence of Laurent Gbagbo proposes that representatives of the parties attend the testimony at the location of the witness and that measures be put in place to avoid that the prohibition of witness preparation be circumvented.¹⁵
14. The Defence of Charles Blé Goudé opposes the video link requests by the Prosecutor, reiterating its view that video-link testimony, as a generally undesirable alternative to live testimony, should only be used on an exceptional basis and that, more specifically, the circumstances supporting the Prosecutor's Second Request do not qualify as a relevant factor warranting the use of video-link.¹⁶ The Defence for Charles Blé Goudé also recalls that, in other instances, arrangements were made so as

¹² ICC-02/11-01/15-1070-Red, paras 5-6.

¹³ ICC-02/11-01/15-1075-Conf, para. 18.

¹⁴ ICC-02/11-01/15-1075-Conf, para. 20.

¹⁵ ICC-02/11-01/15-1075-Conf, paras 21-24.

¹⁶ ICC-02/11-01/15-1074-Conf, paras 6-10.

to allow the relevant travel documents to be timely issued; notes that the Prosecutor fails to adequately explain why similar arrangements could not be put in place for Witness P-0554¹⁷ and submits that the alternative measure of having Witness P-0554 testify at the end of the list of witnesses should have rather been pursued by the Prosecutor¹⁸.

15. The Chamber makes reference to its previous decision authorising testimony via video-link under Rule 67 of the Rules, where general considerations are laid out in detail¹⁹, as well as its recent decision authorising video-link testimony for Witnesses P-0293 and Witness P-0362.²⁰ The Chamber notes that Witness P-0554 is a crime base witness whose testimony will be shorter than that of certain other witnesses, and that there is no significant difference between live testimony in The Hague and live testimony by means of video-link. The Chamber sees therefore no reason to pursue the alternative solution of postponing the testimony of Witness P-0554 until after the completion of the list of remaining witnesses. Accordingly, the Prosecutor's Second Request can equally be granted.

16. Indeed, the Chamber is of the view that the rights of the Defence are not affected by video-link testimony in the manner in which it has so far been organised in this case, as also confirmed by the experience with witnesses recently heard in this form. The Chamber also reiterates that with basic preparation (in particular by communicating to the Registry in advance the documents that may be shown to the witness), testimony by video-link can go as smoothly as testimony in the courtroom in The Hague. As a consequence, the Chamber does not need to consider the proposal of the Defence of Laurent Gbagbo to have parties' representatives at the video-link location.

¹⁷ ICC-02/11-01/15-1074-Conf, paras 11-13.

¹⁸ ICC-02/11-01/15-1075-Conf, para.14.

¹⁹ "Decision on the mode of testimony of Rule 68(3) witnesses", 11 October 2016, ICC-02/11-01/15-721.

²⁰ ICC-02/11-01/15-1060.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

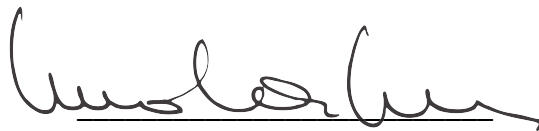
GRANTS the Prosecutor's First and Second Requests;

DECIDES that Witness P-0554 shall be accorded the special measures of reading assistance, adapted questioning and the presence of a psychologist next to the Witness during her testimony;

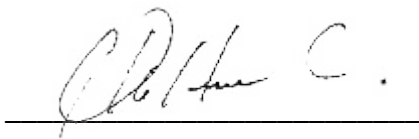
AUTHORISES BY MAJORITY, Judge Henderson dissenting for similar reasons to those already expressed on this issue in relation to previous decisions,²¹ the testimony by video-link of Witness P-0554 and **DIRECTS** the Registry and the parties and participants to prepare accordingly;

ORDERS the Defence for Mr Gbagbo and the Defence for Mr Blé Goudé to file public redacted versions of their responses as soon as practicable.

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



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated 27 November 2017

At The Hague, The Netherlands

²¹ [ICC-02/11-01/15-721-Anx](#); [ICC-02/11-01/15-1060-Anx](#).