

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 October 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ***

Public Document

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)

Source: Office of Public Counsel for Victims

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

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I. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)¹ submits that Mr Gbagbo’s request to hold the opening statements in Abidjan (Côte d’Ivoire) or in Arusha (Tanzania) (the “Request for *in situ* proceedings”)² must be dismissed.

2. The Legal Representative stresses the importance of holding proceedings in the country where the crimes were committed because this course of events is very likely to provide maximum access to a large public, the victims and the affected communities. This also contributes to the transparency of and accessibility to the proceedings, as well as to a large dissemination of information and to making justice more visible for the victims. However, in the present case and at this point in time, holding the opening statements *in situ* is neither feasible nor desirable.

3. The Legal Representative submits that logistical and security considerations militate against holding the opening statements in Abidjan.

4. Having consulted the victims on the matter, the Legal Representative also submits that holding *in situ* hearings in a location other than Abidjan, even though in the African continent, would be from the victims’ perspective equivalent to holding the proceedings in The Hague. Indeed, holding *in situ* hearings in any place other than Abidjan is likely to satisfy neither the needs of the victims nor the interests of justice and would as a consequence result in unjustified and unnecessary efforts and expenses.

¹ See the “Directions on the conduct of the proceedings” (Trial Chamber I), No. ICC-02/11-01/15-205, 3 September 2015, p. 24.

² See the “Requête de la Défense afin que les déclarations d’ouverture du procès aient lieu en Côte d’Ivoire ou du moins en Afrique”, No. ICC-02/11-01/15-241, 24 September 2015 (the “Request for *in situ* proceedings”).

5. Victims also fear that the presence of the Accused on Ivorian soil may lead to a recurrence of the violence, particularly in this period of elections. In the victims' opinion, the Request for *in situ* proceedings aims mostly at providing a political tribunal to the Accused under the guise of opening statements. Victims also question the very presence of the Accused in Abidjan because he seems unable to attend hearings even in The Hague.

6. Regarding Mr Gbagbo's request to consider holding several judicial site visits (the "Request for site visits")³ and the Prosecution's submissions in this regard (the "Prosecution's Submissions"),⁴ the Legal Representative supports judicial site visit(s) after the commencement of the trial. This course of events will indeed contribute to bringing proceedings closer to the affected communities and victims, and it will allow the Trial Chamber (the "Chamber") to fully appreciate the evidence presented at trial.

II. Background

7. On 24 September 2015, the *Gbagbo* Defence filed the Request for *in situ* proceedings.⁵

8. On 25 September 2015, the *Blé Goudé* Defence filed its observations on the Request for *in situ* proceedings, supporting it.⁶

9. During the status conference held on 25 September 2015, the parties, participants and the Registry had the opportunity to provide their "preliminary

³ See the "Soumissions concernant les visites sur les sites", No. ICC-02/11-01/15-255-Red, 1 October 2015 (the "Request for site visits").

⁴ See the "Prosecution's submissions concerning a site visit", No. ICC-02/11-01/15-268, 5 October 2015 (the "Prosecution's Submissions").

⁵ See the Request for *in situ* proceedings, *supra* note 2.

⁶ See 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'", No. ICC-02/11-01/15-243, 25 September 2015.

views” on the matter.⁷ Subsequently, on 30 September 2015, the Chamber indicated that any response to the Request for *in situ* proceedings was to be filed by 14 October 2015 at the latest.⁸

10. On 1 October 2015, the *Gbagbo* Defence filed the Request for site visits.⁹

11. On 5 October 2015, the Prosecution requested that a judicial site visit be scheduled during the presentation of the Prosecution’s case, after the hearing of the first five Prosecution witnesses.¹⁰

12. Pursuant to regulation 24(2) of the Regulations of the Court, the Legal Representative respectfully submits her consolidated response to the Request for *in situ* proceedings, the Request for site visits, and the Prosecution’s Submissions.

III. Submissions

1. The *Gbagbo* Request for *in situ* proceedings should be dismissed

13. As a preliminary remark, the Legal Representative wishes to reiterate her position expressed during the status conference held on 25 September 2015.¹¹ In particular, the Legal Representative notes that the Defence’s Request for *in situ* proceedings has been filed 45 days before the scheduled date for the commencement of the trial and therefore too late to allow the Registry to conduct a feasibility assessment and for the Chamber to decide on whether or not to recommend to the Presidency the holding of the opening statements *in situ*.

⁷ See the transcript of the hearing held on 25 September 2015, No. ICC-02/11-01/15-T-4-ENG ET, p. 53, line 24 to p. 62, line 1

⁸ See the e-mail received from the Trial Chamber on 30 September 2015 at 17h23.

⁹ See the Request for site visits, *supra* note 3.

¹⁰ See the Prosecution’s Submissions, *supra* note 4.

¹¹ See the transcript of the hearing held on 25 September 2015, No. ICC-02/11-01/15-T-4-ENG ET, p. 56, line 19 to p. 58, line 3.

14. In these circumstances, the Defence's Request for *in situ* proceedings has been perceived by the consulted victims as yet another attempt to further delay the proceedings. Moreover, victims have expressed their disappointment for some of the arguments put forward by the Defence to support its Request. Indeed, victims have noticed that the Defence refers several times to the interests of victims in seeing justice done in the place where the crimes were committed. While the victims certainly favour proceedings in Abidjan, they have expressed serious concerns that this move by the Defence could grant the possibility for the Accused to take the floor during the opening statements addressing political issues. Moreover, victims have also indicated that the presence of the Accused in Côte d'Ivoire could lead to a serious deterioration of the situation – instead of favouring reconciliation as indicated by the Defence –¹² at a very delicate moment such as the electoral period.

15. Victims have strongly indicated that they fear for their security should the Accused return to Côte d'Ivoire, even for a very limited period of time. In this regard, the main concern expressed by victims is that the pro-Gbagbo network is still very active and the presence of Mr Gbagbo and Mr Blé Goudé may result in the worsening of the security situation in and around places where they reside.

16. Turning to the logistical considerations, the Legal Representative observes that a feasibility study undertaken by the Registry will be necessary in order to fully assess the possibility of holding *in situ* proceedings. The experience in past cases has shown that this is a complex exercise requiring the involvement of different sections within the Registry and that it may take several weeks before said assessment is finalised.

¹² See the Request for *in situ* proceedings, *supra* note 2, p. 9.

17. In any case, above all considerations, the Legal Representative contends that security reasons strongly militate against the Defence's Request for *in situ* proceedings at this point in time.

18. As the Trial Chamber is aware of, the first round of the Presidential elections is scheduled to take place on 25 October 2015. In accordance with article 44 of Law No. 2000/514, the President of Côte d'Ivoire is elected with the absolute majority of the votes. If said majority is not achieved at the first round of the elections, a second round will take place within 15 days from the announcement of the results of the first round. Considering the current political situation in Côte d'Ivoire, the need for a second round cannot be excluded. Accordingly, the second round of the Presidential elections would most likely coincide with the opening of the trial.

19. While it is true that the security situation in Abidjan has improved, past experience has shown that the electoral period is always a sensitive one and regrettably likely to cause episodes of violence. Holding an *in situ* hearing in Abidjan during the electoral period will increase the risk of such episodes of violence, thereby exposing the victims, the Accused, their lawyers and Court's staff to security risks.

20. In this regard, it is worth recalling the role the "*jeunes patriotes*" still have in the political arena. They are considered to be the strong arm of the *Front populaire ivoirien* and they have taken active part in the recent protests occurred in Abidjan on the occasion of the organisation of the march on 10 September 2015 which caused the death of three people in Gagnoa, the region of origin of Mr Gbagbo.¹³

21. Finally, regarding the possibility to hold the hearing for the opening statements in Arusha (Tanzania), victims have expressed the views that this option does not favour the proximity of the judicial proceedings.

¹³ See France 24/AFP, "Regain de tensions en Côte d'Ivoire à deux mois de la présidentielle", 10 September 2015, available at <<http://www.france24.com/fr/20150911-cote-divoire-candidature-president-ouattara-gbagbo-laurent-simone>>.

22. Therefore, the Legal Representative considers that the holding of the hearing for the opening statements in Abidjan is not possible or appropriate at this point in time and that the holding of said hearing in Arusha will not serve the purpose of bringing the proceedings closer to the victims and affected communities.

2. The Trial Chamber should consider holding a judicial site visit

23. The Legal Representative supports the holding of a judicial site visit. She indicates that this course of events will have a significant impact on the effective participation of victims in the proceedings broadly interpreted, insofar as they will certainly feel that their concerns are duly taken into account and that justice is being done. Victims have already expressed to the Legal Representative their wish that the Judges visit the places where the crimes were committed in order to fully understand the events they suffered from.

24. Concerning the presence of the Accused, the Legal Representative shares the Prosecution's concerns,¹⁴ which are echoed by the victims who have indicated that said presence is not desirable for security reasons. Indeed, they fear possible episodes of violence particularly because the majority of them still reside in areas where pro-Gbagbo supporters also live.

25. Concerning the locations to be visited, the Legal Representative agrees with the Prosecution that said site visit should focus on the main locations identified in the Decision confirming the charges and should include Adjamé, Abobo, Attecoubé, Cocody, Plateau, Port-Bouët and Yopugon.¹⁵

¹⁴ See the Prosecution's Submissions, *supra* note 4, para. 7.

¹⁵ *Idem*, paras. 8 and 9.

26. Concerning the timing for the site visit, the Legal Representative takes note of the Prosecution's suggestion to organise such visit after the testimony of the first five Prosecution's witnesses and the estimated time of said testimony.¹⁶ While she does not oppose the proposal, she wonders whether a judicial site visit towards the middle or the end of the Prosecution's case will not be more appropriate. Indeed, it will allow the Chamber to be fully acquainted with the Prosecution's case and hence the Chamber will, in turn, fully benefit from said site visit.

27. Regarding the *Gbagbo* Defence's proposal for three additional judicial site visits,¹⁷ the Legal Representative does not oppose said possibility and reserves her rights to address the interests of the victims she represents in further submissions if and when the Defence provides details of said proposals.

IV. Conclusion

28. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to dismiss the Request for *in situ* proceedings and to consider holding a judicial site visit in the course of the Prosecution's case.



Paolina Massidda
Principal Counsel

Dated this 6th day of October 2015

At The Hague, The Netherlands

¹⁶ *Ibid.*, paras. 10-13.

¹⁷ See the Request for site visits, *supra* note 9, para. 52.