



Original: English

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

Date: 17 June 2020

THE APPEALS CHAMBER

Before:

**Judge Chile Eboe-Osuji, Presiding
Judge Howard Morrison
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa**

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

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

Public

Decision rescheduling the hearing before the Appeals Chamber

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for Laurent Gbagbo
Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Legal Representative of Victims
Ms Paolina Massidda

Counsel for Charles Blé Goudé
Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

REGISTRY

Registrar
Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Trial Chamber I of 15 January 2019 (ICC-02/11-01/15-T-232-ENG), with reasons issued on 16 July 2019 (ICC-02/11-01/15-1263 and its annexes),

Noting the ‘Decision vacating the hearing before the Appeals Chamber’ of 22 May 2020 (ICC-02/11-01/15-1352),

Issues the following

DECISION

1. The hearing in this appeal shall take place from 22 to 24 June 2020, in the format set out below in this decision.
2. The Registrar is ordered to continue to liaise with the parties and the OPCV with a view to identifying and finalising any technical parameters to facilitate the hearing.
3. The Registrar is ordered to reclassify document ICC-02/11-01/15-1342-Conf as public.
4. The Prosecutor and counsel for Mr Gbagbo are ordered to file public redacted versions, or request reclassification, of their respective filings - ICC-02/11-01/15-1329-Conf-Corr and its annex, and ICC-02/11-01/15-1358-Conf - within two weeks of notification of this decision.

REASONS

A. Background

1. On 20 March 2020, the Appeals Chamber scheduled a hearing in this appeal, to take place from 10 to 13 May 2020. It also set a deadline for the submission of any request for leave to reply by the Prosecutor to the acquitted persons' responses to her appeal.¹
2. On 14 April 2020, the Prosecutor informed the Appeals Chamber that she would not seek leave to file a written reply and would instead 'address any arguments raised in the Defence Responses and respond to any questions from the Appeals Chamber during any hearing, as appropriate'.²
3. On 17 April 2020, the Prosecutor filed an application to postpone or cancel the hearing of the Appeals Chamber.³ She requested that in lieu of the hearing, written submissions could be filed, within 21 working days, in answer to questions to be provided by the Appeals Chamber; and that, if needed, any further submissions or replies could be filed, either in writing or at a hearing scheduled later in the year when the health situation in The Netherlands had improved. The Prosecutor asked to be consulted should the Appeals Chamber consider other methods of holding a hearing.⁴
4. Counsel for Mr Blé Goudé⁵ did not object to the Prosecutor's suggestion of filing written submissions within 21 working days,⁶ but opposed cancellation of the hearing, requesting that it be rescheduled to a later date, upon the resumption of work at the premises of the Court; he submitted that there was a need for a hearing, given the importance, novelty and complex nature of the issues on appeal.⁷ Counsel for Mr

¹ [Order scheduling a hearing before the Appeals Chamber and setting a time limit for any request for leave to reply](#), ICC-02/11-01/15-1318.

² Corrigendum of "Prosecution's provision of information in relation to further written submissions", notified on 15 April 2020, ICC-02/11-01/15-1329-Conf-Corr, para. 4.

³ [Prosecution's application to postpone or cancel the appeal hearing scheduled for 11-13 May 2020 and to consider alternative proposals to expedite the appeal](#), notified on 20 April 2020, ICC-02/11-01/15-1330 ('Prosecutor's Application to Postpone the Hearing').

⁴ [Prosecutor's Application to Postpone the Hearing](#), para. 38.

⁵ [Blé Goudé Defence Response to the 'Prosecution's application to postpone or cancel the appeal hearing scheduled for 11-13 May 2020 and to consider alternative proposals to expedite the appeal' \(ICC-02/11-01/15-1330\)](#), 21 April 2020, ICC-02/11-01/15-1335 ('Mr Blé Goudé's Response to the Prosecutor's Application to Postpone the Hearing').

⁶ [Mr Blé Goudé's Response to the Prosecutor's Application to Postpone the Hearing](#), para. 7.

⁷ [Mr Blé Goudé's Response to the Prosecutor's Application to Postpone the Hearing](#), paras 4, 11, 15.

Gbagbo also requested that the hearing be postponed.⁸ He raised various issues as to the feasibility of holding a virtual hearing,⁹ and concerning the difficulties for the defence team to prepare for any hearing, given the restrictions in place as a result of the COVID-19 pandemic.¹⁰ He did not oppose the suggestion that the Appeals Chamber require further submissions in writing, prior to a hearing, subject to various outstanding procedural issues being resolved, including the issue of any reply by the Prosecutor.¹¹ The Office of Public Counsel for victims, on behalf of the victims participating in this appeal (‘OPCV’),¹² stressed that the ‘proceedings should proceed expeditiously and that it is in the interests of all parties and participants that the matter is adjudicated without undue delay’.¹³ It agreed with the Prosecutor’s proposals,¹⁴ outlining its own difficulties,¹⁵ while also asking to be consulted should the Appeals Chamber anticipate other methods of holding a hearing,¹⁶ and requesting that the deadlines currently set in the appeal not be affected.¹⁷

5. On 30 April 2020, the Appeals Chamber issued the ‘Decision rescheduling, and directions on, the hearing before the Appeals Chamber’,¹⁸ in which it requested written submissions on specific questions set out therein by 22 May 2020, and rescheduled the hearing from 27 to 29 May 2020.¹⁹ Noting, as mentioned above, the Prosecutor’s Application to Postpone the Hearing and related submissions filed by counsel for Mr Gbagbo, Mr Blé Goudé and the OPCV in their responses thereto, the

⁸ [Réponse de la Défense à la ‘Prosecution’s application to postpone or cancel the appeal hearing scheduled for 11-13 May 2020 and to consider alternative proposals to expedite the appeal’ \(ICC-02/11-01/15-1330\)](#), 21 April 2020, ICC-02/11-01/15-1334 (‘Mr Gbagbo’s Response to the Prosecutor’s Application to Postpone the Hearing’), p. 19.

⁹ [Mr Gbagbo’s Response to the Prosecutor’s Application to Postpone the Hearing](#), paras 27-37.

¹⁰ [Mr Gbagbo’s Response to the Prosecutor’s Application to Postpone the Hearing](#), paras 38-42.

¹¹ [Mr Gbagbo’s Response to the Prosecutor’s Application to Postpone the Hearing](#), paras 50 *et seq.*

¹² [CLR’s Response to the ‘Prosecution’s application to postpone or cancel the appeal hearing scheduled for 11-13 May 2020 and to consider alternative proposals to expedite the appeal’](#), 20 April 2020, ICC-02/11-01/15-1331 (‘OPCV’s Response to the Prosecutor’s Application to Postpone the Hearing’).

¹³ [OPCV’s Response to the Prosecutor’s Application to Postpone the Hearing](#), para. 4.

¹⁴ [OPCV’s Response to the Prosecutor’s Application to Postpone the Hearing](#), para. 7.

¹⁵ [OPCV’s Response to the Prosecutor’s Application to Postpone the Hearing](#), para. 6.

¹⁶ [OPCV’s Response to the Prosecutor’s Application to Postpone the Hearing](#), para. 9.

¹⁷ [OPCV’s Response to the Prosecutor’s Application to Postpone the Hearing](#), para. 7.

¹⁸ [Decision rescheduling, and directions on, the hearing before the Appeals Chamber](#), 30 April 2020, ICC-02/11-01/15-1338 (‘Appeals Chamber’s Decision of 30 April 2020’).

¹⁹ [Appeals Chamber’s Decision of 30 April 2020](#), paras 1-4.

Appeals Chamber also ordered the Registrar ‘to liaise with the parties and the victims as to any technical parameters with respect to the form of the hearing’.²⁰

6. On 6 May 2020, counsel for Mr Blé Goudé filed an urgent request to postpone the hearing.²¹ In their respective filings, the parties and the OPCV raised a number of requirements that, they claim, would need to be met for a virtual hearing to take place - including access to: real time transcripts to the extent possible; secure and easily accessible communications between counsel and client and full communication among counsel and team members during the hearing; real time ‘live feed’ for others who needed to follow the hearing; the provision of the necessary hardware and software; interpretation; technical assistance from the Registry in installing the necessary software and/or equipment; and adequate testing and familiarisation prior to the hearing.²² Publicity of the hearing was also raised as an essential requirement.²³

7. On 22 May 2020, the Appeals Chamber rejected Mr Blé Goudé’s request for postponement of the hearing. It rejected the argument as to the right of Mr Blé Goudé and his co-counsel to be physically present in the courtroom for the purpose of the hearing,²⁴ and indicated that the precise modalities of holding a virtual hearing, that adequately met due process rights, were still being explored and would be communicated in due course.²⁵ However, the Appeals Chamber considered it reasonable to postpone the hearing, noting that ‘further time would allow for outstanding technical preparations [...] to be finalised’ and that fact that the premises of the Court was expected to partially reopen on 1 June 2020.²⁶ It indicated that it was

²⁰ [Appeals Chamber’s Decision of 30 April 2020](#), para. 5.

²¹ Confidential Blé Goudé Defence Urgent Request for Postponement pursuant to Article 67 of the Statute, ICC-02/11-01/15-1340-Conf (a public redacted version was filed the same day - [ICC-02/11-01/15-1340-Red](#)).

²² [Prosecution’s response to “Blé Goudé Defence Urgent Request for Postponement pursuant to Article 67 of the Statute”](#), 8 May 2020, ICC-02/11-01/15-1341, para. 16; see also, paras 23 and 25; Réponse de la Défense à la « Blé Goudé Defence Urgent Request for Postponement pursuant to Article 67 of the Statute » (ICC-02/11-01/15-1340-Conf), 12 May 2020, notified on 13 May 2020, ICC-02/11-01/15-1346-Conf. A public redacted version was filed on 4 June 2020 - [ICC-02/11-01/15-1346-Red](#) (‘Mr Gbagbo’s Response to Mr Blé Goudé’s Request for Postponement’), paras 18-22, 33-57, 61-64; CLRV Response to the “Confidential Blé Goudé Defence Urgent Request for Postponement pursuant to Article 67 of the Statute”, ICC-02/11-01/15-1342-Conf, paras 17-23.

²³ Mr Gbagbo’s Response to Mr Blé Goudé’s Request for Postponement, paras 50-52.

²⁴ [Decision vacating the hearing before the Appeals Chamber](#), 22 May 2020, ICC-02/11-01/15-1352, para. 7.

²⁵ [Decision vacating the hearing before the Appeals Chamber](#), ICC-02/11-01/15-1352, para. 9.

²⁶ [Decision vacating the hearing before the Appeals Chamber](#), ICC-02/11-01/15-1352, para. 9.

exploring with the Registry the possibility of holding the hearing on 10-12 June 2020, dates which would be confirmed in due course.²⁷

8. On the same day, the parties and the OPCV filed their submissions in response to the questions put by the Appeals Chamber.²⁸

9. On 5 June 2020, the Appeals Chamber informed the Registry that:

In view of the current state of technical preparation of the hearing and the need for proper training for all participants, the need to respect the medical clearance procedure for those participants who will come to the Court building, and the prospect of further lifting of restrictions on movement on account of the COVID-19 pandemic, the Appeals Chamber now intends to hold the hearing during the period from **22 to 24 June 2020, by way of a partially virtual hearing**. This decision is subject to the technical framework being fully functional by that time.

10. The Appeals Chamber therefore instructed the Registry:

- i. ‘To communicate the intended new hearing date to all parties and participants and to inform them that a scheduling order, including a time table for the hearing, will be issued in due course (subject to the technical framework being in place)’;
- ii. ‘To continue to technically prepare for the hearing and to liaise with the parties and participants so as to ensure that they receive adequate training and familiarisation with the technical system that is to be used’; and
- iii. ‘To start with the medical clearance procedure for the parties and participants of the hearing, as required’.

11. The Registry was also instructed to immediately bring to the Appeals Chamber’s attention any issue that could have an impact on the feasibility of holding the hearing on the indicated dates.²⁹

²⁷ [Decision vacating the hearing before the Appeals Chamber](#), ICC-02/11-01/15-1352, para. 11.

²⁸ [Blé Goudé Defence Submissions answering the Appeals Chamber’s questions in “Decision rescheduling, and directions on, the hearing before the Appeals Chamber” \(ICC-02/11-01/15-1338\)](#), 22 May 2020, ICC-02/11-01/15-1348; [Prosecution’s submissions in response to the Chamber’s questions on the Appeal](#), 22 May 2020, ICC-02/11-01/15-1349; [Soumissions de la Défense présentées conformément à la « Decision rescheduling, and directions on, the hearing before the Appeals Chamber » \(ICC-02/11-01/15-1338\)](#), 22 May 2020, ICC-02/11-01/15-1350; [Legal Representative’s submissions on the questions raised by the Appeals Chamber in its Decision ICC-02/11-01/15-1338](#), 22 May 2020, ICC-02/11-01/15-1351.

12. On 15 June 2020, counsel for Mr Gbagbo requested that the hearing scheduled for 22-24 June 2020 be postponed to a date when it would be possible for a hearing to take place in the premises of the Court, in order for Mr Gbagbo's rights to be respected and the fairness of the proceedings preserved.³⁰ In support of his request, counsel for Mr Gbagbo submits that a hearing is crucial in the present appeal and that the parties need to be able to properly prepare for it.³¹ Noting that the Appeals Chamber had not yet formally confirmed the dates for the hearing, or informed the parties and the OPCV about its format and content,³² and in light of the current state of technical preparation, counsel for Mr Gbagbo submits that holding a hearing on 22-24 June would affect the rights of Mr Gbagbo and the fairness of the proceedings.³³ In particular, counsel for Mr Gbagbo made submissions: (i) on the lack of certainty as to the format of the hearing (physical or virtual);³⁴ (ii) on the obstacles for a physical hearing to take place at this time (including the limited number of participants allowed in the courtroom; the health risk, and, the likely impossibility of Mr Gbagbo attending the hearing in person);³⁵ and (iii) on the obstacles related to a virtual hearing (including access to: real time transcripts during the hearing; logistical support in French; and, appropriate training with the relevant software).³⁶

13. On 16 June 2020, the Prosecutor, the OPCV and the defence team for Mr Blé Goudé informed the Appeals Chamber that they did not intend to file a response to Mr Gbagbo's Request for Postponement.³⁷ The Defence team for Mr Blé Goudé also indicated that 'it does not oppose [Mr Gbagbo's Request for Postponement], in light of its own request presented to the Appeals Chamber in May.'

14. Although the Appeals Chamber makes reference to confidential filings in this decision, nothing contained herein is considered confidential.

²⁹ Email from Legal Staff of the Appeals Division to the Registry, 5 June 2020, at 13:57.

³⁰ Requête de la Défense afin que l'audience d'appel prévue du 22 au 24 juin 2020 soit fixée à une date ultérieure, quand les conditions seront réunies pour que les droits de Laurent Gbagbo soient respectés, 14 June 2020, notified on 15 June 2020, ICC-02/11-01/15-1358-Conf ('Mr Gbagbo's Request for Postponement').

³¹ Mr Gbagbo's Request for Postponement, paras 49-56, 81.

³² Mr Gbagbo's Request for Postponement, paras 49-56, 80.

³³ Mr Gbagbo's Request for Postponement, paras 56-57.

³⁴ Mr Gbagbo's Request for Postponement, para. 59.

³⁵ Mr Gbagbo's Request for Postponement, paras 60-74.

³⁶ Mr Gbagbo's Request for Postponement, paras 75-79.

³⁷ Emails sent by the Prosecutor, the OPCV and the defence team of Mr Blé Goudé to Legal Staff of the Appeals Division on 16 June 2020, at 12:31, 12:41 and 12:55, respectively.

B. Merits

15. The present decision deals with Mr Gbagbo's Request for Postponement and with the modalities for the hearing, taking into account the submissions made by the parties and the OPCV in filings before the Appeals Chamber.

16. The Appeals Chamber considers that the current arrangements put in place by the Registry, as expanded upon below, suffice both to guarantee the rights of the parties and the OPCV, in the current exceptional circumstances, and to ensure that these proceeding can proceed expeditiously.

17. First, as a result of the current situation in the host State, the hearing in this appeal will take place with the Prosecutor, acquitted persons and their representatives, OPCV, judges and legal staff of the Appeals Chamber, and members of the Registry, participating either from the seat of the Court, *inter alia* in the courtroom, meeting rooms or offices, distanced from each other as necessary, and subject to medical clearance from the Court, or from separate locations outside the Court. Both Mr Gbagbo and Mr Blé Goudé will, therefore, be able to participate either directly from the premises of the Court or from separate locations, with or without members of their teams being present in the same room. Should either Mr Gbagbo or Mr Blé Goudé not be physically present in the same room as his counsel or members of his defence team, he will be able to communicate confidentially with them, through other electronic means. The Appeals Chamber considers that confidential communication either by telephone or by way of other online technology, suffices for this purpose in the particular circumstances of this case.

18. Second, the Appeals Chamber turns to the more precise modalities for the hearing, which have been raised in the submissions. Simultaneous interpretation into both English and French will be provided. Real time transcripts are not possible, but English and French transcripts will be provided after each hearing, within 24 hours and, if possible, sooner. In this regard, the Appeals Chamber would note that, although access to real time transcripts is, without doubt, convenient, it is not indispensable for the conduct of a hearing, particularly in a situation such as the present. The Appeals Chamber must particularly caution against the tendency of counsel to view all modern conveniences as fundamental legal obligations on the part

of those who provide them. There is no doubt that real time transcripts make life easier for judges and counsel in the course of hearing, but on no account should they be considered a right, the absence of which should prevent a hearing taking place. All members of the parties' and OPCV's teams will be able to participate either physically or virtually in the hearing. The number of those who wish to participate in the proceedings directly from within the courtroom will be correlated to social distancing guidelines and medical clearance, as referred to above. The Registry will continue ensuring that adequate testing of the software and equipment envisaged to be used for the virtual hearing takes place, prior to the hearing, with the parties, the OPCV and the Appeals Chamber, and that all participants are able to participate. The Registry has indicated that logistical support may also be provided in French, as requested. Adequate training of all those participating in the hearing has already started and will continue prior to the hearing.

19. Third, as regards publicity of the hearing, although it will not be possible for the general public to attend from the seat of the Court, publicity will be achieved through online streaming of the hearing on the Court's website, with the usual 30-minute delay applicable to hearings at the premises of the Court. The public will, therefore, be able to follow these proceedings fully.

20. Finally, while the Prosecutor's Request to Postpone the Hearing has now become moot, as have most of the arguments raised by the parties and the OPCV in that context, the Appeals Chamber will address below some outstanding arguments. With regard to counsel for Mr Gbagbo's argument that the final translation into French of Judge Henderson's Reasons will not be received before the hearing and that it is needed prior to any hearing,³⁸ the Appeals Chamber recalls that it has already provided counsel for Mr Gbagbo with the opportunity to seek leave to file further submissions if necessary, once this document has been received,³⁹ and considers that there is no reason for altering this approach. With respect to the arguments related to the Prosecutor's potential request for leave to reply,⁴⁰ the Appeals Chamber recalls that the Prosecutor has not sought leave to reply and will be bound, as with the other

³⁸ [Mr Gbagbo's Response to the Prosecutor's Application to Postpone the Hearing](#), paras 46, 49.

³⁹ [Decision on Mr Gbagbo's requests for extension of time, translations and correction of transcripts](#), 26 November 2019, ICC-02/11-01/15-1289, para. 25.

⁴⁰ [Mr Gbagbo's Response to the Prosecutor's Application to Postpone the Hearing](#), paras 47, 51.

parties, to the format of the hearing which is set out below. Further, with respect to the need of further submissions should the Appeals Chamber characterise the issues raised in the Prosecutor's second ground of appeal as factual issues,⁴¹ or in response to the parties' written answers to questions by the Appeals Chamber,⁴² the Appeals Chamber recalls its questions on the content of the second ground of appeal in the Appeals Chamber's Decision of 30 April 2020,⁴³ and considers that should further submissions on this issue, or any other, be required, the parties and the OPCV will be notified accordingly.

21. In light of the above, and after having been informed by the Registry as to the current state of technical preparation for the hearing, the Appeals Chamber considers that holding a partially virtual hearing on 22-24 June 2020, with the arrangements put in place by the Registry, will not affect the rights of Mr Gbagbo or the fairness of the proceedings, as argued by counsel for Mr Gbagbo in his request. It therefore rejects Mr Gbagbo's Request for Postponement and confirms that the hearing will take place from 22-24 June 2020, by way of a partially virtual hearing. However, the Registrar is ordered to continue to liaise with the parties and the OPCV with a view to addressing any outstanding questions,⁴⁴ and identifying and finalising any technical parameters to facilitate the hearing.

22. Turning now to the hearing (scheduled to commence at 10:00 on each day), due to COVID-19 restrictions it will consist of three sessions of one hour each in duration, divided by two 45 minute breaks. The parties and the OPCV will be invited to address the Appeals Chamber, complementing their own submissions and/or addressing arguments raised by other parties and the OPCV, as follows:

I. Ground One

- i. Prosecutor (30 minutes)
- ii. OPCV (30 minutes)
- iii. Mr Laurent Gbagbo (30 minutes)
- iv. Mr Charles Blé Goudé (30 minutes)

⁴¹ [Mr Gbagbo's Response to the Prosecutor's Application to Postpone the Hearing](#), para. 54.

⁴² [Mr Gbagbo's Response to the Prosecutor's Application to Postpone the Hearing](#), para. 55.

⁴³ [Appeals Chamber's Decision of 30 April 2020](#), pp. 7-8.

⁴⁴ See in particular, Mr Gbagbo's Request for Postponement, para. 79.

II. Ground Two

- i. Prosecutor (30 minutes)
- ii. OPCV (30 minutes)
- iii. Mr Laurent Gbagbo (30 minutes)
- iv. Mr Charles Blé Goudé (30 minutes)

III. Remedy

- i. Prosecutor (20 minutes)
- ii. OPCV (20 minutes)
- iii. Mr Laurent Gbagbo (20 minutes)
- iv. Mr Charles Blé Goudé (20 minutes)

IV. Questions from the bench

(60 minutes)

V. Final submissions from the parties and the OPCV

- i. Prosecutor (15 minutes)
- ii. OPCV (15 minutes)
- iii. Mr Laurent Gbagbo (15 minutes)
- iv. Mr Charles Blé Goudé (15 minutes)

23. Questions may be put to the parties and the OPCV from the bench in respect of the above issues or any other relevant issues both during their submissions, as well as during the time reserved for questions.

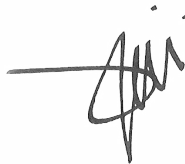
24. The Registry is ordered to draw up, in consultation with the Appeals Chamber, a protocol for the conduct of the partially virtual hearing in this case, which will be disseminated to the parties and the OPCV prior to the hearing.

25. With regard to the level of classification of certain filings, the Appeals Chamber notes that the OPCV indicates that the ‘CLRv Response to the “Confidential Blé Goudé Defence Urgent Request for Postponement pursuant to Article 67 of the Statute”’, ICC-02/11-01/15-1342-Conf, does not contain confidential information and

can be reclassified as public. Pursuant to regulation 23*bis*(3) of the Regulations of the Court, the Registrar is ordered to reclassify document ICC-02/11-01/15-1342-Conf as public.

26. The Prosecutor and counsel for Mr Gbagbo are ordered to file public redacted versions, or request reclassification, of their respective filings - ICC-02/11-01/15-1329-Conf-Corr and its annex, and ICC-02/11-01/15-1358-Conf - within two weeks of notification of the present decision.

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



Judge Chile Eboe-Osuji
Presiding

Dated this 17th day of June 2020

At The Hague, The Netherlands