



Ivory Coast Situation and cases Update August 2014 – June 2015

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Laurent Gbagbo and Blé Goudé cases

[Background] Laurent Gbagbo is facing 4 counts of crimes against humanity (murder, rape, other inhumane acts or attempted murder, persecution) allegedly committed between 16 December 2010 and April 2011 in Abidjan, Abobo and Yopougon, Côte d’Ivoire. On 12 June 2014, Pre Trial Chamber I (PTC I) by majority, confirmed all the charges against Laurent Gbagbo and committed him to trial.¹ On 11 September 2014, PTC I rejected the Defence request to appeal the decision.²

Charles Blé Goudé is facing 4 counts of crimes against humanity (murder, rape, other inhumane acts of attempted murder, persecution) allegedly committed between 16 December 2010 and 12 April 2011 in Abidjan, Côte d’Ivoire. On 11 December 2014, PTC I confirmed the charges against Charles Blé Goudé;³ Judge Christine Van den Wyngaert partly dissenting.⁴

Admissibility challenge against Blé Goudé case is rejected

On 27 September 2014, the Defence requested that the case be declared inadmissible.⁵ It argued that the incidents in relation to which Mr Blé Goudé had been charged did not meet the threshold of the gravity test for cases to be heard by the ICC - i.e. the numbers

¹ Decision on the Confirmation of Charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-01/11-656-Red , <http://www.icc-cpi.int/iccdocs/doc/doc1783399.pdf>.

² Decision on the Defence request for leave to appeal the “Decision on the Confirmation of Charges against Laurent Gbagbo”, 11 September 2014, ICC-02/11-01/11-680, <http://icc-cpi.int/iccdocs/doc/doc1814133.pdf>

³ Decision on the confirmation of charges against Charles Blé Goudé, ICC-02/11-02/11-186, 11 December 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1879935.pdf>.

⁴ Partially Dissenting Opinion of Judge Christine Van den Wyngaert, ICC-02/11-02/11-186-Anx, 11 December 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1879934.pdf>.

⁵ Defence application pursuant to Articles 19(4) and 17(1)(d) of the Rome Statute, ICC-02/11-02/11-171, 27 September 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1840086.pdf>.

of casualties attributed to Mr Blé Goudé were of a very limited nature and he could not be perceived as the “most senior leader” of his youth group. Ms. Paolina Massidda, representing victims in the case, opposed the challenge.⁶

On 12 November 2014, Pre-Trial Chamber I rejected the Defence’s challenge.⁷ It found that:

- It could not assess whether the incidents were sufficiently grave without also assessing evidence and, such a step was premature at this stage of the proceedings.
- In accordance with the jurisprudence of the Appeals Chamber⁸ and the intention of the drafters, the categories of perpetrators who can potentially be brought before the court is *not* limited to most senior leaders.
- The prosecutor’s allegations, taken together instead of in isolation, make the case brought against Charles Blé Goudé sufficiently grave.

Gbagbo and Blé Goudé Cases are joined and date set for trial

In December 2014, the Office of the Prosecutor requested to join the *Gbagbo* and *Blé Goudé* cases.⁹ It argued that the charges confirmed against them were largely the same, related to the same context, and that the two accused had shared a common plan/purpose, and acted jointly to implement this plan. On 6 January 2015, the Common Legal Representative for the victims expressed the victims’ support to the request.¹⁰ In February 2015, the Defences for Mr Gbagbo and Mr Blé Goudé opposed the request.¹¹

On 11 March 2015, Trial Chamber I joined the cases.¹² It found that, based on the nature of the charges, joinder was appropriate. It also found that a joint trial would enhance the fairness and expeditiousness of the proceedings by avoiding the duplication of evidence, inconsistency in the presentation and assessment of evidence, undue impact on witnesses and victims, and unnecessary expense.

On 18 May 2015, the Chamber set the date for the beginning of the trial joint trial case for 10 November 2015.¹³

⁶ Observations on behalf of victims on the “Defence application pursuant to Articles 19(4) and 17(1)(d) of the Rome Statute”, ICC-02/11-02/11-180, 20 October 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1844983.pdf>.

⁷ Decision on the Defence challenge to the admissibility of the case against Charles Blé Goudé for insufficient gravity, ICC-02/11-02/11-185, 12 November 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1857570.pdf>.

⁸ Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled ‘Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58’, ICC-01/04-169, 13 July 2006, <http://www.icc-cpi.int/iccdocs/doc/doc183559.pdf>.

⁹ Prosecution’s Request to join the cases, ICC-02/11-01/11-738, 16 December 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1880137.pdf>; and Prosecution’s Request to join the cases, ICC-02/11-02/11-194, 22 December 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1892019.pdf>.

¹⁰ Response of the Common Legal Representative of victims to the Prosecution’s request to join the Gbagbo and Blé Goudé cases (ICC-02/11-02/11-194), ICC-02/11-02/11-196, 6 January 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1894332.pdf>.

¹¹ Defence response to the “Prosecutor’s request to join the cases of the Prosecutor v. Laurent Gbagbo and the Prosecutor v. Charles Blé Goudé, ICC-02/11-01/11-765, 12 February 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1919606.pdf> <http://www.icc-cpi.int/iccdocs/doc/doc1918802.pdf>; ICC-02/11-02/11-217, 19 February 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1918802.pdf>.

¹² Decision on Prosecution requests to join the cases of The Prosecutor v. Laurent Gbagbo and The Prosecutor v. Charles Blé Goudé and related matters, ICC-02/11-02/11-222, 11 March 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1939586.pdf>.

¹³ Order setting the commencement date for trial, ICC-02/11-01/15-58, 7 May 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1966575.pdf>.

Chamber sets new procedure for victims to seek participation

On 6 March 2015, the Chamber ruled on the application process that will be implemented with regards to victim participation in the trial proceedings.¹⁴ The Chamber set a new procedure as follows:

- Victims who participated at the pre trial stage of the *Gbagbo* and *Blé Goudé* cases do not have to apply again and will be automatically authorised to participate at the trial stage.
- Victims recognised as participants in the *Blé Goudé* case are automatically recognised as participants in the *Gbagbo* case.
- New applicants will need to use an individual simplified form though applications already submitted using the standard application form will not need to be resubmitted.
- All applications must be transmitted to the Registry 70 days prior to trial.
- Applications will be transmitted by the Registry to the Parties and the Chamber on a rolling basis.
- The parties can file observations on the applications within 21 days.
- The Registry's report on the applications will be transmitted to the Chamber alongside the applications which should be grouped by incident.

Legal representation

The Chamber indicated it did not see any reason to depart from the system implemented at pre-trial whereby the Office of Public Counsel for Victims (OPCV) is representing the victims admitted to participate. However, the Chamber reserved its decision pending the provision of additional observations. It directed the Registry to submit a report which would include i) the victims' preferences; ii) the grouping of victims; and iii) the composition of the legal team supported by the legal aid scheme. Following the consultations, the Registry recommended that OPCV continue the appointment.¹⁵

Simone Gbagbo case: Appeals Chamber confirms S. Gbagbo case admissible

[Background] Ms Simone Gbagbo, the wife of Laurent Gbagbo, is wanted by the ICC for her alleged role as indirect co-perpetrator, in relation to four counts of crimes against humanity: murder, rape and other sexual violence, persecution and other inhuman acts, allegedly committed in the context of post-electoral violence in Côte d'Ivoire between 16 December 2010 and 12 April 2011. On 30 September 2013, the Republic of Côte d'Ivoire challenged the admissibility of the case.¹⁶ It submitted that domestic proceedings had been instituted against Ms Gbagbo based on allegations similar to those made in the case

¹⁴ Decision on Victim Participation, ICC-02/11-01/11-800, 6 March 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1934587.pdf>.

¹⁵ The report while confidential is referred to in Information on Common Legal Representation of Victims in the proceedings, ICC-02/11-01/15-53-Red, 15 May 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1976215.pdf>.

¹⁶ "Requête de la République de Côte d'Ivoire sur la recevabilité de l'affaire Le Procureur c. Simone Gbagbo, et demande de sursis à exécution en vertu des articles 17, 19 et 95 du Statut de Rome", dated 30 September 2013 and registered on 1 October 2013, ICC-02/11-01/12-11-Conf and annexes; a public redacted version was registered on 1 October 2013, Accessible at <http://www.icc-cpi.int/iccdocs/doc/doc1653132.pdf>.

before the ICC and that Côte d'Ivoire was willing and able to try Ms Gbagbo for those crimes.

On 11 December 2014, Pre-Trial Chamber I rejected Côte d'Ivoire's admissibility challenge.¹⁷ The Chamber considered that from the documentation provided by Côte d'Ivoire the domestic investigations were sparse and disparate. The Chamber also found that the documentation submitted did not show that Simone Gbagbo was being prosecuted by Côte d'Ivoire for the same conduct attributed to her in the case before the Court. On 17 December 2014, Côte d'Ivoire appealed the decision.¹⁸

On 27 May 2015, the Appeals Chamber confirmed that the case was admissible before the ICC.¹⁹ It ruled that the presumption in favour of domestic jurisdictions did not apply because the Pre-Trial Chamber had found that no relevant investigations and/or prosecutions were ongoing at the national level. The Appeals Chamber recalled that it will not interfere with the factual findings of a first-instance Chamber unless it is shown that the Pre-Trial or Trial Chamber "committed a clear error, namely: misappreciated the facts, took into account irrelevant facts or failed to take into account relevant facts". In the present circumstances, it concluded that no such unreasonable error was made by the Pre-Trial Chamber. Ms. Gbagbo is yet to be handed over to the ICC by the Ivorian authorities.

¹⁷ Public redacted version of Decision on Côte d'Ivoire's challenge to the admissibility of the case against Simone Gbagbo, ICC-02/11-01/12-47-Red, 11 December 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1882718.pdf>.

¹⁸ Appeal of the Republic of Côte d'Ivoire against Pre-Trial Chamber I's Decision on Côte d'Ivoire challenge to the admissibility of the case against Simone Gbagbo, ICC-02/11-01/12-48, 17 December 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1889576.pdf>.

¹⁹ Judgment on the appeal of Côte D'Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled "Decision on Côte D'Ivoire's challenge to the admissibility of the case against Simone Gbagbo", ICC-02/11-01/12-75-Red, 27 May 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1976613.pdf>.