

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/11-01/15
Date: **21 September 2018**

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

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

Public

Decision on Defence requests relating to the Prosecutor's response to the Defence motions for acquittal and to the scheduling of the hearing to be held on 1 October 2018 (filings no. 1208 and 1211)

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Eric MacDonald

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr 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

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Judge Cuno Tarfusser, acting as Single Judge on behalf of Trial Chamber I of the International Criminal Court, and as Presiding Judge responsible for the conduct of the proceedings in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 60, 61(11), 64(6)(a) and 64(8)(b) of the Rome Statute (“Statute”), and Rules 118 and 119 of the Rules of Procedure and Evidence (“Rules”), issues this Decision on Mr Gbagbo’s *“Requête de la Défense concernant la suite de la procédure après le dépôt par le Procureur et par la RLV de leur réponse à la requête de la Défense afin qu’un jugement d’acquittement soit prononcé en faveur de Laurent Gbagbo”* and on the requests submitted in Mr Blé Goudé’s *“Defence Response to « Requête de la Défense concernant la suite de la procédure après le dépôt par le Procureur et par la RLV de leur réponse à la requête de la Défense afin qu’un jugement d’acquittement soit prononcé en faveur de Laurent Gbagbo »* (ICC-02/11-01/15-1208-Conf)”.

I. Procedural Background

1. On 9 February 2018, the Chamber issued the “Order on the further conduct of the proceedings” (“First Order”).¹
2. On 19 March 2018, the Office of the Prosecutor filed the “Prosecution’s Mid-Trial Brief submitted pursuant to Chamber’s Order on the further conduct of the proceedings”.²
3. On 23 April 2018, the Defence of Mr Charles Blé Goudé and the Defence of Mr Laurent Gbagbo filed their observations on the continuation of the trial proceedings.³
4. On 4 June 2018, the Chamber issued the “Second Order on the further conduct of the proceedings” (“Second Order”).⁴

¹ ICC-02/11-01/15-1124

² ICC-02/11-01/15-1136 and Annexes 1, A, B, C, D and E

³ “Defence’s written observations on the continuation of the trial proceedings pursuant to Chamber’s Order on the further conduct of the proceedings (ICC-02/11-01/15-1124)”, ICC-02/11-01/15-1158-Conf (‘Blé Goudé Defence observations’); “Observations de la Défense présentées à la suite de l’ordonnance de la Chambre ‘on the further conduct of the proceedings’ du 9 février 2018 (ICC-02/11-01/15-1124)”, ICC-02/11-01/15-1157-Conf.

⁴ ICC-02/11-01/15-1174

5. On 13 June 2018, the Chamber issued the “Decision on “Urgent Prosecution’s motion seeking clarification on the standard of a ‘no case to answer’ motion”.⁵
6. On 23 July 2018, the Defence for Mr Charles Blé Goudé filed the “Blé Goudé Defence No Case to Answer Motion” (“Mr Blé Goudé’s Request”).⁶
7. On 23 July 2018, the Defence for Mr Laurent Gbagbo filed the “*Requête de la Défense de Laurent Gbagbo afin qu’un jugement d’acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée*” (“Mr Gbagbo’s Request”).⁷
8. On 10 September 2018, the Office of the Public Counsel for Victims filed, on behalf of the victims participating in the proceedings, the “Response to Defence Submissions on the specific factual issues for which the evidence presented could be insufficient to reasonably support a conviction” (“OPCV Response”).⁸
9. On 10 September 2018, the Office of the Prosecutor filed the “Prosecution’s Response to Defence No Case to Answer Motions” (“Prosecutor’s Response”).⁹
10. On 12 September 2018, the Defence for Mr Laurent Gbagbo filed the “*Requête de la Défense concernant la suite de la procédure après le dépôt par le Procureur et par la RLV de leur réponse à la requête de la Défense afin qu’un jugement d’acquittement soit prononcé en faveur de Laurent Gbagbo*”.¹⁰
11. On 14 September 2018, the Office of the Prosecutor filed the “Prosecution’s Response to Defence Request concerning the continuation of the no case to answer proceedings”.¹¹

⁵ ICC-02/11-01/15-1182

⁶ ICC-02/11-01/15-1198-Conf and Annex 1

⁷ ICC-02/11-01/15-1199 and 7 annexes

⁸ ICC-02/11-01/15-1206-Conf

⁹ ICC-02/11-01/15-1207 and Annex 1 and Annexes A and B

¹⁰ ICC-02/11-01/15-1208-Conf

¹¹ ICC-02/11-01/15-1209-Conf

12. On 14 September 2018, the Office of Public Counsel for Victims filed, on behalf of the participating victims, the “Response to the ‘*Requête de la Défense concernant la suite de la procédure après le dépôt par le Procureur et par la RLV de leur réponse à la requête de la Défense afin qu’un jugement d’acquittement soit prononcé en faveur de Laurent Gbagbo*’”.¹²

13. On 14 September 2018, the Defence for Mr Charles Blé Goudé filed the “Defence Response to « *Requête de la Défense concernant la suite de la procédure après le dépôt par le Procureur et par la RLV de leur réponse à la requête de la Défense afin qu’un jugement d’acquittement soit prononcé en faveur de Laurent Gbagbo* »”.¹³

II. Analysis

14. The Chamber’s Second Order directed the parties to submit “concise and focused written submissions that are conducive to the efficient consideration by the Chamber”. In response, the parties filed documents of respectively 311 (Blé Goudé Defence), 498 (Gbagbo Defence), and 1093 pages (Office of the Prosecutor).

15. The length of the Prosecutor’s Response triggered a number of requests by the Defence teams: in particular, either to reject it *in limine*, as it does not comply with the Second Order, or to be granted additional time to meaningfully consider it, with a view to adequately preparing for the oral hearing and to updating their motions as required. The Defence for Mr Gbagbo also requests the translation into French of the Prosecutor’s Response and the postponement of the hearing until such translation has been completed.

16. In addition, the Gbagbo Defence requests the Chamber to reject the OPCV Response *in limine* or, alternatively, to reject those parts that go beyond the ‘views and concerns’ of the victims. Failing that, the Gbagbo Defence requests to be given two additional weeks to amend its Request in light of the OPCV’s submissions.

¹² ICC-02/11-01/15-1210-Conf

¹³ ICC-02/11-01/15-1211-Conf

17. In relation to the request to reject the Prosecutor's Response *in limine*, the Second Order urged all parties and participants to file "concise and focused written submissions". This also in view of the holding of a public hearing where, in accordance with the paramount principles of publicity and orality, any further submission would be heard and discussed. Indeed, the Prosecutor's Response is extremely long (1093 pages, containing 6001 footnotes referring to evidence), and contains a significant number of sections which clearly exceed the scope and purpose of a "response" to the Defence's requests to dismiss the charges.

18. By the same token, a rejection *in limine* of the document would not be conducive to the efficiency and effectiveness of the proceedings and is not therefore an adequate remedy.

19. As regards Mr Gbagbo's request for translation of the Prosecutor's Response into French, the Single Judge instructs the Registrar to promptly devising arrangements for the translation which are practically feasible and consistent with the need to ensure that the trial is not affected by undue delay, also by liaising with the Defence for Mr Gbagbo.

20. As regards the Gbagbo Defence's claim that the OPCV Response should be rejected *in limine* since it went beyond presenting the views and concerns of the victims, the Single Judge is not persuaded that this is the case, especially in light of the Defence's sweeping statement that only one paragraph of the OPCV Response actually deals with the victims' views and concerns. This is unsubstantiated and exaggerated. In the absence of any detailed submissions in this regard, the Defence's request is rejected.

21. The other Defence requests (in particular, the request to be given more time to prepare for the oral hearing, including possibly by updating the Defence submissions in light of the Prosecutor's Response), require a difficult balancing act between the two paramount principles of fairness and expeditiousness of the proceedings. Article 64(2) of the Statute makes it necessary to balance the following:

- i. On the one hand, the right to a fair trial, including the fundamental defence right to have adequate time and facilities to prepare (article 67(1)(b) of the Statute) and to have key documents translated (article 67(1)(f) of the Statute);
- ii. On the other hand, the expeditiousness of the proceedings, which includes the right of the accused to be tried without undue delay.

The features of the Prosecutor's Response (including its size, content and extremely complex structure, as well as the fact that it is drafted in English only), considered in light of the fundamental rights of the accused, make it indeed extremely difficult to find, at this stage, a solution which fully satisfies at the same time these two principles. Rejecting the Defence's request for a full translation and additional time to analyse the document would inevitably affect the rights *sub i*), while granting it would seriously conflict with the Chamber's duty and obligation to ensure that the trial is conducted without undue delay.

22. In light of this, and also bearing in mind the principle of orality of the proceedings, it is necessary and appropriate:

- (i) that the hearing be held as scheduled and
- (ii) that, in light of the features of the Prosecutor's Response and the Defence requests, to adapt its scope and purpose, as follows: at the opening of the hearing, the Prosecutor shall present orally her response to the Defence's requests to dismiss the charges. This will allow both the parties and the Chamber to simultaneously obtain in French and in English the concise and focussed submissions originally requested from the Prosecutor in the Second Order.

23. Following the Prosecutor's presentation, the OPCV will have the opportunity to present their views in a similarly oral, concise and focussed way. Subsequently, the

Defence will be given an opportunity to respond orally, and may request to be granted additional time to prepare such response in whole or in part, if need be.

24. The Chamber may also pose specific questions in relation to legal or procedural issues arising from the Prosecutor's Response or the Defence submissions in this regard.

25. Finally, the Single Judge notes that the Defence, the Prosecutor's and the OPCV's filings are currently classified as confidential. With a view to preserving the paramount principle of the publicity of the proceedings in connection with the hearing and to allowing presentations and discussions to be held publicly to the maximum extent feasible, it is necessary that public redacted versions of their respective filings are filed by the parties and participants in advance of the hearing.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Defence requests to dismiss the Prosecutor's and the OPCV's Responses *in limine*;

REJECTS the Defence requests to postpone the hearing scheduled to commence on 1 October 2018;

ORDERS the Prosecutor to respond orally to the Defence's requests to dismiss all charges, in a concise and focused manner, at the opening of the hearing commencing on 1 October 2018;

DECIDES that the OPCV shall be allowed to also orally and concisely present their views at the hearing;

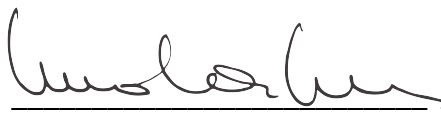
DECIDES that the Defence will be given an opportunity to respond orally to the Prosecutor's and the OPCV's presentations to the extent that this is feasible and without prejudice to their requesting additional time to prepare such response in whole or in part;

DECIDES that the Chamber may also pose specific questions in relation to legal or procedural issues arising from the Prosecutor's Response or the Defence submissions in this regard;

ORDERS all parties and participants to file a public redacted version of their respective filings no later than Friday 28 September 2018 at 16:00;

INSTRUCTS the Registrar to promptly devise arrangements for the translation of the Prosecutor's Response by liaising with the Defence for Mr Gbagbo.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', is written over a horizontal line.

Judge Cuno Tarfusser, Single Judge

Dated 21 September 2018

At The Hague, The Netherlands