

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

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

Date: 28 September 2018

TRIAL CHAMBER I

Before:

**Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Geoffrey Henderson**

SITUATION IN COTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLE GOUDE

Public

Public Redacted Version of « 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) », ICC-02/11-01/15-1211-Conf, 28 September 2018

Source: Defence of Mr Charles Blé Goudé

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

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I. Introduction

1. Pursuant to the Chamber's instructions transmitted by e-mail on 12 September 2018 to submit any responses to the Defence of Mr Laurent 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"¹ before Friday 14 September 2018, the Defence of Mr Blé Goudé ("the Defence") files the present response ("Response").

II. Confidentiality

2. Pursuant to regulation 23bis(2) of the Regulations, the present response is filed confidentially because it directly responds to a confidential application made by the Defence of Laurent Gbagbo. A public redacted version will be filed in due course.

III. Submissions

3. The Defence of Mr Blé Goudé notes that the Prosecution's Response of 10 September 2018 ("Prosecution's Response") goes beyond the scope of responding to the Defence's No Case to Answer Motion and significantly expands upon its Trial Brief submissions. Based on a cursory look at the Prosecution's Response, it is apparent that the Prosecution does not restrict its submissions to responding to the Defence's No Case to Answer Motion. Rather, the Prosecution delves extensively into its own case theory, while developing new arguments both legally and factually, in an attempt to reinforce its Trial Brief arguments, which were not addressed by the Defence in its motion. For instance, in its Trial Brief the Prosecution does not make any mention of [REDACTED], and only cites [REDACTED] once with respect to

¹ ICC-02/11-01/15-1208-Conf.

its submissions regarding the alleged acts proscribed by Article 7(1) of the Statute.² The Prosecution Response goes into significant detail about how these two documents would allegedly support its theory [REDACTED].³ Further, the Prosecution submitted document [REDACTED] through witness P-0046; yet, the Prosecution did not ask him any questions with respect to the [REDACTED].⁴ Rather, the Prosecution used the document to question the witness on [REDACTED], and it was in support of this alleged fact that the Prosecution cited the document in the Trial Brief.⁵ Another example can be found in the Prosecution's submissions on the alleged relationship between Charles Blé Goudé and Laurent Gbagbo; the Prosecution, in its response, refers to evidence that was not mentioned in the Trial Brief.⁶ On the issue of the emergence of an alleged group called the "*escadrons de la mort*" in 2003, the Prosecution had originally cited, in its Trial Brief, [REDACTED], as a sole reference.⁷ Yet, in its Response, the Prosecution cites additional evidence to bolster this allegation by referring to i) portions of [REDACTED] testimony which were not cited in its Trial Brief and ii) a video which the Prosecution cited in the Trial Brief to support an entirely unrelated allegation.⁸

4. These are but a few illustrations demonstrating the extent to which the Prosecution expands its narrative in an attempt to bolster its Trial Brief allegations, namely by bringing in evidence on which it had not previously

² ICC-02/11-01/15-1136-Conf-Anx1-Corr3, para. 155, footnote 473.

³ See for example ICC-02/11-01/15-1207, para. 172, footnotes 319-327.

⁴ See ICC-02/11-01/15-T-126-CONF-FRA CT, p. 46.

⁵ ICC-02/11-01/15-1136-Conf-Anx1-Corr3, para. 155, footnote 473.

⁶ See the Prosecution's Response, para. 1363, ii, citing Video, CIV-OTP-0064-0121 at 00:20:22-00:26:12 (excerpt from RTI broadcast of 13 February 2011 at 20h; transcript at CIV-OTP-0086-1096). The Prosecution also refers to an excerpt of the book *Ma part de vérité* as well as an excerpt of a video, which were not previously mentioned in the Trial Brief; See the Prosecution's Response, paras 1730-1731.

⁷ ICC-02/11-01/15-1136-Conf-Anx1-Corr3, para. 44; [REDACTED].

⁸ See ICC-02/11-01/15-1136-Conf-Anx1-Corr3, para. 551.

relied on at trial and in its Trial Brief, impermissibly going beyond the scope of the intended purpose of a response to the Defence's motion.

5. The Defence admits that in the course of a no case to answer procedure the Prosecution would ordinarily be afforded the full opportunity to substantiate how there is sufficient evidence to sustain the charges with any item of evidence that is in the record. However, the Defence submits that the procedural posture of this case makes such submissions inappropriate at this time. Unlike in *The Prosecutor v. Ruto & Sang* and at the *ad hoc* tribunals, the Prosecution here was invited and in fact did submit a Trial Brief in which it was granted the full opportunity to outline its case against Mr Charles Blé Goudé, by specifically "indicat[ing] to the Chamber in which way [it] thinks the evidence supports each of the elements of the different crimes and the forms of responsibility charged."⁹ It was in response to this document that the Chamber requested the Defence to indicate whether it wished to file a no case to answer motion,¹⁰ thereby implying that it would serve as the basis for contesting the Prosecution's case. Accordingly, the Defence of Mr Blé Goudé notes that the Prosecution's Response goes well beyond the scope of the Chamber's instructions in the Second Order on the further conduct of proceedings of 4 June 2018, in which the Chamber urged the parties "to file concise and focused written submissions that are conducive to the efficient consideration by the Chamber."¹¹
6. With the Prosecution's Response length of 1057 pages excluding the annexes, the Prosecution effectively allocates itself a second chance to expand on its case theory as asserted in its Trial Brief. If the Chamber were to accept the

⁹ ICC-02/11-01/15-1124, para. 10.

¹⁰ ICC-02/11-01/15-1124, para. 14 ("Once the Defence teams have received the updated trial brief, they will be in a position to make written observations on the continuation of the trial proceedings.")

¹¹ ICC-02/11-01/15-1174, para 11 and the order requesting that the Prosecutor and the LRV file no later than 27 August 2018 their response in accordance with the same modalities.

Prosecution response, this would put the Defence in a significant procedural disadvantage. The Prosecution essentially attempts to remedy all the material deficiencies of the Trial Brief, which the Defence made visible in its No Case to Answer Motion. Given that the Prosecution was already granted ample opportunity to submit its case in full with the Trial Brief, it should have strictly limited its response to responding to the discrete arguments raised by the Defence in its motion. Therefore, the Defence submits that the Chamber should reject the Prosecution's Response *in limine*.

7. In the alternative, should the Chamber reject the requested relief, the Defence submits that the current time frame as scheduled for the hearing will not be compatible with Mr Blé Goudé's fundamental right to have adequate time and facilities to prepare his case, pursuant to Article 67(1)(b) of the Rome Statute. Upholding this right is especially critical in this situation where the Defence requested the no case to answer procedure, and therefore it should have sufficient facilities to prepare for the hearing in order to present its arguments fully. It should be noted that the Prosecution was already granted ample time and facilities to prepare its Trial Brief, and has effectively taken the opportunity again to introduce its theory in response to the Defence's No Case to Answer Motion. Accordingly, the Prosecution has availed itself of two opportunities spanning several months to prepare and refine its theory while as of this moment, the Defence only has seventeen days to digest 1057 pages excluding annexes, and prepare oral submissions and responses to the Chamber's questions.
8. Therefore, were the Chamber to accept the Prosecution's Response, the Defence would be put at a considerable procedural disadvantage, which it is unable to remedy with a mere seventeen days left before the start of the hearing.


9. Therefore, the Defence of Mr Blé Goudé respectfully requests to obtain from the Chamber additional time and facilities in order to appropriately remedy this procedural prejudice.

RELIEF SOUGHT

For the foregoing reasons, the Defence respectfully requests the Chamber to:

- Reject *in limine* the Prosecution's Response;
- In the alternative, grant the Defence additional time to prepare for the oral hearing.

Respectfully submitted,



A rectangular box containing a handwritten signature in dark ink. The signature is cursive and appears to read 'Mr. Knoop'. Below the signature, there is a horizontal line.

Mr. Knoop, Lead Counsel and Mr. N'Dry, Co-Counsel

Dated this

28 September 2018

At The Hague, the Netherlands