

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15
Date: 28 October 2019

THE APPEALS CHAMBER

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

SITUATION IN CÔTE D'IVOIRE

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

Public Document

**Public Redacted Version of "CLRV Consolidated Response to Defence's Requests
No. ICC-02/11-01/15-1272-Conf, No. ICC-02/11-01/15-1273 and No. ICC-02/11-01/15-
1275-Conf", 16 October 2019, ICC-02/11-01/15-1278-Conf**

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 opposes (i) the request by the Defence for Mr Gbagbo (the “Defence”) to reconsider the Appeals Chamber’s decision of 1 February 2019 ordering the interim release with conditions of the Defendant and to rule his immediate release (the “Defence’s First Request”);² (ii) the Defence’s request for suspension of the time limit to respond to the Prosecutor’s Appeal Brief (the “Defence’s Second Request”),³ and (iii) the Defence’s request to obtain official translations in the two working languages of the Court of certain documents and corrected version of the transcripts related to the hearings held between 12 and 14 November 2018 (the “Defence’s Third Request”).⁴

2. At the outset, the Legal Representative argues that the Defence’s First and Second Requests should be dismissed *in limine* on the ground that were both tardily submitted. The Defence’s lack of due diligence regarding the exercise of its rights cannot justify a further delay of the Appeals proceedings. Further, the Defence’s Third Request should be also dismissed *in limine* on the ground that its object is moot. Indeed, the Registry has already been requested to provide the translation of the three documents at stake – *i.e.* the Prosecution’s Trial Brief;⁵ Mr Gbagbo’s “*no case*

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 “Version publique expurgée de la « Requête de la Défense afin d’obtenir que la Chambre d’appel restitue à Laurent Gbagbo, acquitté de toutes les charges portées contre lui, l’intégralité de ses droits humains fondamentaux. »”, No. ICC-02/11-01/15-1272-Red, 8 October 2019 (the “Defence’s First Request”).

³ See the “Requête afin que le droit qu’a l’intéressé de recevoir en français le Jugement d’acquiescement, l’acte d’appel et le mémoire d’appel du Procureur avant de répondre au mémoire d’appel du Procureur soit respecté.”, No. ICC-02/11-01/15-1273, 10 October 2019 (the “Defence’s Second Request”).

⁴ See the “Requête de la Défense afin que soient portés au dossier de l’affaire dans les deux langues de travail de la Cour tous les documents importants et toutes les interventions des Parties, condition nécessaire à la conduite équitable de la procédure d’appel.”, No. ICC-02/11-01/15-1275-Conf, 14 October 2019 (the “Defence’s Third Request”).

⁵ See the “Third Corrected version to Annex 1 of Prosecution’s Mid-Trial Brief, 8 June 2018, ICC-02/11-01/15-1136-Conf-Anx1-Corr2”, No. ICC-02/11-01/15-1136-Conf-Anx1-Corr3, 13 June 2018.

to answer” motion⁶ and the Prosecution’s Response thereto.⁷ The Registry confirmed that the requested translations will be provided within the time frame allowed by the concerned section’s workload, on the basis of the level of urgency of any competing demands. Similarly, the Registry undertook to provide the corrected version of all relevant transcripts in the two working languages of the Court.

3. Assuming *arguendo* that the Appeals Chamber will entertain the substance of the relevant Defence’s arguments, the Legal Representative submits the following observations. As regards the First Request, the Defence does not show any error in the reasoning of the Appeals Chamber’s decision to impose conditions on the interim release of Mr Gbagbo. Further, the Defence does not demonstrate either the existence of particular circumstances for a reconsideration or a change in the circumstances since February 2019, which would justify modifying the conditions imposed by the Appeals Chamber. Furthermore, in relation to the Second Request, the Defence fails to show good cause to extend the time limit for its response to the Prosecution’s Appeal Brief under regulation 35(2) of the Regulations of the Court.

4. Lastly, the Defence’s Second and the Third Requests should be respectively rejected on the ground that the issue related to the translation of documents has been already discussed before, and settled by, the Trial Chamber. As such, both the Second and the Third Request amount to an attempt to re-litigate matters on which a final decision was rendered.

⁶ See the “Version corrigée de la ‘Requête de la Défense de Laurent Gbagbo afin qu’un jugement d’acquiescement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée.”, No. [ICC-02/11-01/15-1199-Corr](#), 25 September 2018.

⁷ See the “Prosecution’s Response to Defence No Case to Answer Motions”, No. [ICC-02/11-01/15-1207](#), 10 September 2018.

II. BACKGROUND

5. On 15 January 2019, the Majority of the Chamber - Judge Herrera Carbucciona dissenting⁸ - issued the oral Decision on the Defence motions for acquittal (the “Decision on acquittal”),⁹ granting the Defence’s requests. On the same day, the Prosecution filed the “Urgent Prosecution’s request pursuant to article 81(3)(c)(i) of the Statute”.¹⁰

6. On 16 January 2019, the Legal Representative¹¹ and the Defence¹² responded orally to the Prosecution’s Request on continued detention during an *ad hoc* hearing convened to discuss the matter. On the same day, the Majority of the Chamber issued the oral decision rejecting the Prosecution’s Request and confirming the order for the release of the Defendants.¹³ On the same day, the Prosecution filed the “Prosecution’s Appeal pursuant to article 81(3)(c)(ii) of the Statute and urgent request for suspensive effect” indicating its intention to appeal the entirety of the Decision on acquittal and requesting suspensive effect of the appeal.¹⁴

7. On 17 January 2019, the Appeals Chamber issued the “Order on the filing of responses to the request of the Prosecutor for suspensive effect” instructing the Legal

⁸ See the “Dissenting Opinion to the Chamber’s Oral Decision of 15 January 2019” (Judge Herrera Carbucciona), No. [ICC-02/11-01/15-1234](#), 15 January 2019.

⁹ See the transcripts of the hearing held on 15 January 2019, No. [ICC-02/11-01/15-T-232-ENG ET](#), page 1, line 15 to page 5, line 7. See also the “Requête de la Défense de Laurent Gbagbo afin qu’un jugement d’acquiescement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée”, No. [ICC-02/11-01/15-1199-Corr](#), 26 September 2018 (dated 23 July 2018) and the “Public Redacted Version of ‘Corrigendum to the ‘Blé Goudé Defence No Case to Answer Motion’ (ICC-02/11-01/15-1198-Conf), 23 July 2018,” 3 August 2018, ICC-02/11-01/15-1198-Conf-Corr”, No. [ICC-02/11-01/15-1198-Corr-Red](#), 3 August 2018 (dated 23 July 2018).

¹⁰ See the “Urgent Prosecution’s request pursuant to article 81(3)(c)(i) of the Statute”, No. [ICC-02/11-01/15-1235](#), 15 January 2019.

¹¹ See the transcripts of the hearing held on 16 January 2019, No. [ICC-02/11-01/15-T-233-Red-ENG ET](#), page 2, line 7 to page 4, line 17.

¹² *Idem*, page 4, line 20 to page 20, line 10.

¹³ See the transcripts of the hearing held on 16 January 2019, No. [ICC-02/11-01/15-T-234-ENG ET](#), page 6, lines 9-17.

¹⁴ See the “Prosecution’s Appeal pursuant to article 81(3)(c)(ii) of the Statute and urgent request for suspensive effect”, No. [ICC-02/11-01/15-1236 OA14](#), 16 January 2019.

Representative and the Defence to file their submissions on the same day.¹⁵ Said submissions were filed accordingly.¹⁶

8. On 18 January 2019, the Appeals Chamber issued the “Decision on the Prosecution’s request for suspensive effect of her appeal under article 81(3)(c)(ii) of the Statute and directions on the conduct of the appeal proceedings”,¹⁷ granting the suspensive effect of the appeal.

9. On 23 January 2019, the Prosecution filed the “Prosecution’s Document in Support of Appeal pursuant to Article 81(3)(c)(ii) of the Statute”.¹⁸ Responses thereto were filed by the Legal Representative,¹⁹ the Defence for Mr Gbagbo²⁰ and the Defence for Mr Blé Goudé²¹ on 29 January 2019.

10. On 1 February 2019, the Appeals Chamber heard oral submissions from the parties and participants in the appeal²² and issued the “Judgment on the Prosecutor’s appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of

¹⁵ See the “Order on the filing of responses to the request of the Prosecutor for suspensive effect” (Appeals Chamber), No. [ICC-02/11-01/15-1237 OA14](#), 17 January 2019.

¹⁶ See the “Response to the Prosecution’s Request for Suspensive Effect of its Appeal under article 81(3)(c)(ii) of the Statute”, No. [ICC-02/11-01/15-1240-Red OA14](#), 17 January 2019; the “Defence Response to the Prosecution’s urgent request for suspensive effect (ICC-02/11-01/15-1236 OA14)”, No. [ICC-02/11-01/15-1238 OA14](#), 17 January 2019; and the “Réponse de la Défense à la « Prosecution’s Appeal pursuant to article 81(3)(c)(ii) of the Statute and urgent request for suspensive effect » (ICC-02/11-01/15-1236)”, No. [ICC-02/11-01/15-1239 OA14](#), 17 January 2019.

¹⁷ See the “Decision on the Prosecution’s request for suspensive effect of her appeal under article 81(3)(c)(ii) of the Statute and directions on the conduct of the appeal proceedings” (Appeals Chamber), No. [ICC-02/11-01/15-1243 OA14](#), 18 January 2019 (the “Decision on suspensive effect”).

¹⁸ See the “Prosecution’s Document in Support of Appeal pursuant to Article 81(3)(c)(ii) of the Statute”, No. [ICC-02/11-01/15-1245 OA14](#), 23 January 2019.

¹⁹ See the “Response to the ‘Prosecution’s Document in Support of Appeal pursuant to Article 81(3)(c)(ii) of the Statute’”, No. [ICC-02/11-01/15-1246 OA14](#), 29 January 2019.

²⁰ See the “Réponse de la Défense au ‘Prosecution’s Document in Support of Appeal pursuant to Article 81(3)(c)(ii) of the Statute’ (ICC-02/11-01/15-1245)”, No. [ICC-02/11-01/15-1248 OA14](#), 29 January 2019.

²¹ See the “Defence Response to the ‘Prosecution’s Document in Support of Appeal pursuant to Article 81(3)(c)(ii) of the Statute’ (ICC-02/11-01/15-1245 OA14)”, No. [ICC-02/11-01/15-1247 OA14](#), 29 January 2019.

²² See the transcripts of the hearing held on 1 February 2019, No. [ICC-02/11-01/15-T-235-Red-ENG](#).

the Statute”,²³ finding that there were compelling reasons to impose conditions on the two Defendants.²⁴

11. On 16 July 2019, the Chamber issued the written reasons for the Decision on acquittal,²⁵ with Annexes A and B containing respectively the concurring separate opinion of Judge Tarfusser and the majority’s analysis of the evidence and Annex C including Judge Herrera Carbuccion Dissenting Opinion. On the same day, the Prosecution filed the “Prosecution’s urgent request for extension of time limits under rule 150(1) and regulation 58(1)”.²⁶ The Legal Representative²⁷ and the Defence for Mr Gbagbo²⁸ filed their responses thereto on the 17 July 2019.

12. On 19 July 2019, the Appeals Chamber issued the “Decision on the Prosecutor’s request for time extension for the notice of appeal and the appeal brief”,²⁹ partially granting the Prosecution’s request and ordering it to file the Notice of Appeal by the 16 September 2019 and the Appeal Brief by 15 October 2019.

13. On 16 September 2019, the Prosecution filed its Notice of Appeal.³⁰ A corrigendum was filed on the next day.³¹

²³ See the “Judgment on the Prosecutor’s appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute” (Appeals Chamber), No. [ICC-02/11-01/15-1251-Red2_OA14](#), 1 February 2019.

²⁴ *Idem*, paras. 59-60.

²⁵ See the “Reasons for oral decision of 15 January 2019 on the *Requête de la Défense de Laurent Gbagbo afin qu’un jugement d’acquittal portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée*, and on the Blé Goudé Defence no case to answer motion” (Trial Chamber I), No. [ICC-02/11-01/15-1263](#), 16 July 2019. See also the “Opinion of Judge Cuno Tarfusser” (Judge Cuno Tarfusser), No. [ICC-02/11-01/15-1263-AnxA](#), 16 July 2019; the “Reasons of Judge Geoffrey Henderson” (Judge Geoffrey Henderson), ICC-02/11-01/15-1263-AnxB-Red, 16 July 2019; and the “Dissenting Opinion Judge Herrera Carbuccion” (Judge Herrera Carbuccion), No. ICC-02/11-01/15-1263-AnxC-Red, 16 July 2019.

²⁶ See the “Prosecution’s urgent request for extension of time limits under rule 150(1) and regulation 58(1)”, No. [ICC-02/11-01/15-1264](#), 16 July 2019.

²⁷ See the “Response to the ‘Prosecution’s urgent request for extension of time limits under rule 150(1) and regulation 58(1)’”, No. [ICC-02/11-01/15-1265](#), 17 July 2019.

²⁸ See the “Réponse de la Défense à la ‘Prosecution’s urgent request for extension of time limits under rule 150(1) and regulation 58(1) (ICC-02/11-01/15-1264).’”, No. [ICC-02/11-01/15-1266](#), 17 July 2019.

²⁹ See the “Decision on the Prosecutor’s request for time extension for the notice of appeal and the appeal brief” (Appeals Chamber), No. [ICC-02/11-01/15-1268 A](#), 19 July 2019.

³⁰ See the “Prosecution Notice of Appeal”, No. [ICC-02/11-01/15-1270](#), 16 September 2019.

³¹ See the “Corrected version of ‘Prosecution Notice of Appeal’, 16 September 2019, ICC-02/11-01/15-1270”, No. [ICC-02/11-01/15-1270-Corr](#), 17 September 2019.

14. On 7 October 2019, the Defence filed a request to reconsider the Appeals Chamber's decision dated 1 February 2019 ruling the interim release with conditions of the Defendant and order his immediate release.³²

15. On 10 October 2019, the Defence filed a request for suspension of the time limit to respond to the Prosecutor's Appeal Brief requesting that the terms start running from the notification of the French translation of (i) Annexes B and C to the written reasons for the Decision on acquittal,³³ (ii) the Prosecution Notice of Appeal³⁴ and the upcoming Appeal Brief.

16. On 14 October 2019, the Defence filed a request to obtain official translations in the two working languages of the Court of the Prosecution's Trial Brief;³⁵ Mr Gbagbo's "no case to answer" motion³⁶ and Prosecution's Response thereto;³⁷ and the corrected version of the transcripts related to the hearings held between 12 and 14 November 2018.³⁸

17. On 15 October 2016, the Prosecution filed its Appeal Brief.³⁹

³² See the Defence's First Request, *supra* note 2.

³³ See the "Reasons for oral decision of 15 January 2019 on the *Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquiescement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée*, and on the Blé Goudé Defence no case to answer motion"; Annex B, "Reasons of Judge Geoffrey Henderson", and Annex C "Dissenting Opinion Judge Herrera Carbuccion", *supra* note 25.

³⁴ See the "Corrected version of 'Prosecution Notice of Appeal', 16 September 2019, ICC-02/11-01/15-1270", No. [ICC-02/11-01/15-1270-Corr](#), 17 September 2019.

³⁵ See the "Third Corrected version to Annex 1 of Prosecution's Mid-Trial Brief, 8 June 2018, ICC-02/11-01/15-1136-Conf-Anx1-Corr2", No. ICC-02/11-01/15-1136-Conf-Anx1-Corr3, 13 June 2018.

³⁶ See the "Version corrigée de la 'Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquiescement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée.'", No. [ICC-02/11-01/15-1199-Corr](#), 25 September 2018.

³⁷ See the "Prosecution's Response to Defence No Case to Answer Motions", No. [ICC-02/11-01/15-1207](#), 10 September 2018.

³⁸ See the Defence's Third Request, *supra* note 4.

³⁹ See the "Public redacted version of 'Prosecution Document in Support of Appeal', ICC-02/11-01/15-1277-Conf, 15 October 2019", No. [ICC-02/11-01/15-1277-Red](#), 16 October 2019.

III. SUBMISSIONS

1. The Defence's Requests should be dismissed *in limine*

18. The Legal Representative argues that the three Requests should be dismissed *in limine* due to the Defence's lateness in filing the First and Second Requests and the moot character of the Third Request.

19. First, the Legal Representative notes the tardy nature of both the First Request to reconsider the decision imposing conditions on the Defendants' interim release and the Second Request, seeking a suspension of the time limit to respond to the Prosecution's Appeal Brief until obtaining a French translation of certain documents. In this regard, the Legal Representative recalls that the Appeals Chamber issued the decision imposing conditions on the interim release of Mr Gbagbo and Mr Blé Goudé on 1 February 2019.⁴⁰ In turn, Trial Chamber I rendered the oral Decision on acquittal on 15 January 2019⁴¹ and the Defence has been on notice of the Prosecution's intention to lodge an appeal against said decision since 16 January 2019.⁴² In addition, Trial Chamber I notified the parties and the participants of the written reasons thereof on 15 July 2019.⁴³

20. Hence, the Defence files respectively (i) the First Request, almost nine months after the issuance of the Appeals Chamber's decision imposing conditions of the interim release of the Defendants; and (ii) the Second Request, almost ten months since it had knowledge of the Prosecution's intention to file an appeal against the

⁴⁰ See the "Judgment on the Prosecutor's appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute" (Appeals Chamber), *supra* note 23.

⁴¹ See the transcripts of the hearing held on 15 January 2019, No. [ICC-02/11-01/15-T-232-ENG ET](#), page 1, line 15 to page 5, line 7 (the "Decision on acquittal").

⁴² See the "Prosecution's Appeal pursuant to article 81(3)(c)(ii) of the Statute and urgent request for suspensive effect", *supra* note 14.

⁴³ See the "Reasons for oral decision of 15 January 2019 on the *Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquiescement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée*, and on the Blé Goudé Defence no case to answer motion"; the "Opinion of Judge Cuno Tarfusser"; the "Reasons of Judge Geoffrey Henderson", and the "Dissenting Opinion Judge Herrera Carbuca", *supra* note 25.

Decision on acquittal, four months after been notified of the written reasons of said decision and on the eve of the filing of Prosecution's Appeal Brief.

21. In these circumstances, the Legal Representative contends that the Defence's inaction arise from lack of due diligence regarding the exercise of its rights. As such, the Defence's lateness in submitting its Requests cannot justify affecting the legal certainty and/or causing a further delay of the Appeals proceedings.

22. Against this practice, the Appeals Chamber of this Court found that: "[a] *party to a proceeding who claims to have an enforceable right must exercise due diligence in asserting such a right. This is as it should be in order for the Trial Chamber [...] to take account of the interests of the other parties to and participants in the proceedings and of the statutory injunction for fairness and expeditiousness*".⁴⁴

23. Moreover, in relation to the Defence's Second Request, previous developments in these proceedings contribute to exclude that the filing in English of the (i) written reasons for the Decision on acquittal;⁴⁵ (ii) the Prosecution Notice of Appeal⁴⁶ and the Appeal Brief was not foreseeable or expected by the Defence. In particular, as previously noted by Trial Chamber I, taking into consideration the fact "*that the pre-trial brief was also originally filed in English only; the previous rejection of the request relating to its translation by the Chamber at that stage and the awareness that, except in the courtroom, English has been the working language of preference for the Prosecutor since the beginning of the case*".⁴⁷

⁴⁴ See the "Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 20 November 2009 Entitled 'Decision on the Motion of the Defence for Germain Katanga for a Declaration on Unlawful Detention and Stay of Proceedings'" (Appeals Chamber), No. [ICC-01/04-01-07-2259 OA10](#), 12 July 2010, para. 54.

⁴⁵ See the "Reasons for oral decision of 15 January 2019 on 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*, and on the Blé Goudé Defence no case to answer motion" ; Annex B, "Reasons of Judge Geoffrey Henderson" and Annex C "Dissenting Opinion Judge Herrera Carbuccion", *supra* note 25.

⁴⁶ See the "Corrected version of 'Prosecution Notice of Appeal', 16 September 2019, ICC-02/11-01/15-1270", No. [ICC-02/11-01/15-1270-Corr](#), 17 September 2019.

⁴⁷ See the "Decision on the request for suspension of the time limit to respond to the Prosecutor's Trial Brief submitted by the Defence for Mr Gbagbo" (Trial Chamber I), No. [ICC-02/11-01/15-1141](#), 26 March 2018, para. 10.

24. All these elements, and the professional duty to act diligently and expeditiously, would have required the Defence to raise the issue at the time of the issuance of the Decision on acquittal or, at the latest, after the notification of the written reasons thereof.

25. In light of the above, the Defence First and Second Requests should be rejected due to their tardiness in the absence of any reasonable explanation for not having raised the matters before the Appeals Chamber in a timely fashion. Victims have indeed a clear interest in seeing the proceedings advancing in a fair and expeditious manner, which should not be endangered by a party's strategy of unduly delaying the proceedings.

26. Lastly, the Defence's Third Request should be dismissed *in limine* on the ground that its object is moot. The Registry has already been requested to provide the translation of the three documents at stake – *i.e.* the Prosecution's Trial Brief;⁴⁸ Mr Gbagbo's "*no case to answer*" motion⁴⁹ and the Prosecution's Response thereto.⁵⁰ The Registry confirmed that the translation of the documents - other than the ones the Defence must receive *promptly* pursuant to article 67(1)(a) of the Statute - will be provided within the time frame allowed by that the concerned section's workload, on the basis of the level of urgency of any competing requests.⁵¹ Similarly, the Registry undertook to provide the corrected version of all relevant transcripts in the two working languages of the Court.⁵² Despite the constant efforts shown by the Registry to provide a translation of documents and corrected version of transcripts in a timely manner, and having regard to the workload generated by the other ongoing

⁴⁸ See the "Third Corrected version to Annex 1 of Prosecution's Mid-Trial Brief, 8 June 2018, ICC-02/11-01/15-1136-Conf-Anx1-Corr2", No. ICC-02/11-01/15-1136-Conf-Anx1-Corr3, 13 June 2018.

⁴⁹ See the "Version corrigée de la '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.", No. [ICC-02/11-01/15-1199-Corr](#), 25 September 2018.

⁵⁰ See the "Prosecution's Response to Defence No Case to Answer Motions", No. [ICC-02/11-01/15-1207](#), 10 September 2018.

⁵¹ See, *inter alia*, the "Decision on the request for suspension of the time limit to respond to the Prosecutor's Trial Brief submitted by the Defence for Mr Gbagbo", *supra* note 47, para. 12.

⁵² See, *inter alia*, the transcript of the status conference held on 26 April 2016, No. [ICC-02/11-01/15-T-34-Red-ENG](#). See also the email on behalf of CMS [REDACTED]. See also the email on behalf of CMS [REDACTED].

proceedings, the Defence still attempts to litigate this matter without bringing any new arguments or information militating in favour of departing from the prior rulings and the practice in the case.

27. Assuming *arguendo* that the Appeals Chamber will entertain the substance of the relevant Defence's arguments, the Legal Representative provides the following response thereto.

2. The Defence's Requests lack on merits

a) *The Defence's First Request*

28. In its First Request, the Defence alleges at the outset that the Appeals Chamber's decision imposing conditions on the interim release of the Defendants⁵³ is based on a "*clear error of reasoning*"⁵⁴ - identified by the alleged failure to articulate the *rationale* behind it⁵⁵ - that would justify its reconsideration.

29. The Defence, however, fails to demonstrate that the Appeals Chamber committed any error of law and/or procedure. The Appeals Chamber's interpretation of article 81(3)(c)(i) of the Statute is well founded and was clearly expressed as follows: "[t]he Appeals Chamber is satisfied that the power to impose conditions on the acquitted person pending appeal also results from the construction of rule 149 of the Rules read with articles 57(3)(a), 60(2) and 64(6)(f) of the Statute and rule 119 of the Rules, in addition to the incidental powers of the Appeals Chamber to protect the integrity of its process".⁵⁶

30. Accordingly, the Defence's arguments amount to a mere disagreement with the decision as it is undisputable that the mentioned legal provisions constitute "*une*

⁵³ See the "Judgment on the Prosecutor's appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute", *supra* note 23.

⁵⁴ See the Defence's First Request, *supra* note 2, para. 30 *et seq.*

⁵⁵ *Idem*, para. 31.

⁵⁶ See the "Judgment on the Prosecutor's appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute", *supra* note 23, para. 53.

*démonstration juridique*⁵⁷ grounding the Appeals Chamber's conclusions.⁵⁸ In this regards, rule 149 of the Rules is clear when it states that the provisions governing the Pre-Trial and Trial Chambers "*shall apply mutatis mutandis to proceedings in the Appeals Chamber*". Thus, the conditions set on the interim release of Mr Gbagbo and Mr Blé Goudé are legally sound and the Appeals Chamber properly exercised its power within the established Court's legal framework.

31. The Defence further alleges that the Appeals Chamber failed to interpret Mr Gbagbo's acquittal as a *radical change of circumstances* that would yet again justify reconsideration on the imposed conditions.⁵⁹ The argument is flawed as the acquittal cannot be considered as a change of circumstances since the decision imposing conditions. Instead, the acquittal is clearly a pre-existing circumstance and constitutes the very reason why the detention regime of the Defendants was amended and interim release granted with conditions.

32. In this regard, the Appeals Chamber found that "*changed circumstances means a change in some or all the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary*".⁶⁰ In the present case, the conditions set out by the Appeals Chamber on 1 February 2019 were determined as a result of a prior ruling - *i.e.* the Trial Chamber's Decision on acquittal. The conditions imposed on the interim release were consequently issued as a result of said ruling, and of the relevant submissions of the parties and participants.

⁵⁷ See the Defence's First Request, *supra* note 2, para. 35.

⁵⁸ *Idem*, para. 36.

⁵⁹ *Ibid.*, para. 50

⁶⁰ See the "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled "Decision on Applications for Provisional Release" (Appeals Chamber), No. [ICC-01/05-01/08-1626-Red OA7](#), 19 August 2011, para. 71. See also, the "Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's "Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa" (Appeals Chamber), No. [ICC-01/05-01/08-631-Red OA2](#), 2 December 2009, para. 60.

33. In addition, the Defence alleges that the Appeals Chamber does not explain what “[translation] *would concretely and precisely be the ‘imperative reasons’*”⁶¹ which could justify the limitations impinging on both Defendants. The Defence seems to misunderstand the Appeals Chamber’s role when alleging a failure to factually demonstrate the existence of a flight’s risk or of a network.⁶² The *onus probandi* remains on the Prosecution, as indicated by the Appeals Chamber: “[t]he *onus of justifying the measure of continued detention upon acquittal lies squarely upon the Prosecutor, and continued detention must be limited to situations which are truly exceptional*”.⁶³

34. The Appeals Chamber therefore only had to assess whether the Prosecution’s factual and legal arguments were well founded to justify either a continued detention or the less strict remedy to impose conditions on the Defendants. Accordingly, the Appeals Chamber ruled that “*the possibility to impose conditions on an acquitted person is justified by the Court’s continued jurisdictional interest in the acquitted person pending the appeal against the acquittal*”.⁶⁴ In this regard, the Legal Representative also recalls that, according to the Appeals Chamber, “*the examination of conditions of release is discretionary*”⁶⁵ and “*the Chamber has the discretion to consider whether the risk of flight can be mitigated by the imposition of conditions and to order conditional release*”.⁶⁶ In the case at hand, the Appeals Chamber - being satisfied of the soundness of the Prosecution’s arguments – made use of the legal tools at its disposal and applied “[its] *incidental powers [...] to protect the integrity of its process*”.⁶⁷

⁶¹ See the Defence’s First Request, *supra* note 2, para. 52.

⁶² *Idem*, para. 53.

⁶³ See the “Judgment on the Prosecutor’s appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute”, *supra* note 23, para. 52.

⁶⁴ *Idem*, para. 53.

⁶⁵ See the “Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled “Decision on Applications for Provisional Release”, *supra* note 60, para. 55.

⁶⁶ *Idem*.

⁶⁷ See the “Judgment on the Prosecutor’s appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute”, *supra* note 23, para. 53.

35. Hence, the Defence's argument alleging the lack of a proper factual basis grounding the Appeals Chamber's decision imposing conditions on the Defendants is ill-founded and must be rejected.

36. Moreover, the Defence alleges that article 81(3)(c)(i) of the Statute cannot be apply in a way that would be "*contraire à la jurisprudence internationale des droits de l'homme et constitue une atteinte aux droits de l'acquitté*".⁶⁸ The Legal Representative opposes the Defence's allegations in this regard and what seems to be an "*à la carte*" interpretation of the Court's legal framework. The legal texts of the Court, including article 81(3)(c)(i), were adopted following the highest standards of human rights and fairness. In this regard, the Legal Representative refers to her oral submissions before the Appeals Chamber on 1 February 2019⁶⁹ and recalls that the European Court of Human Rights stated, in the *Assanidze v. Georgia case*,⁷⁰ that, as long as the detention of a person after acquittal is based on a specific statutory provision or judicial decision, it is not contrary to article 5 of the Convention on Human Rights and the general principle of the rule of law.

37. Lastly, the Defence's arguments on the alleged excessive character of the freedom's limitations that the Defendants would be experiencing⁷¹ are wholly unfounded. The Legal Representative notes that other international criminal tribunals have previously imposed conditional release on acquitted persons, pending an appeal.⁷² Moreover, by analogy the situation of individuals summoned to appear and to whom the Chamber may impose conditions restricting liberty in accordance with rule 119(5) of the Rules is legally sound and has never been interpreted as being in violation of basic human rights. Similarly, the Defence's considerations on the

⁶⁸ See the Defence's First Request, *supra* note 2, para. 57.

⁶⁹ See the transcripts of the hearing held on 1 February 2019, No. [ICC-02/11-01/15-T-235-Red-ENG](#), page 15, line 22 to page 16, line 2.

⁷⁰ ECHR, *Assanidze v. Georgia case* [GC], [71503/01](#), 8 April 2004, paras. 172-176.

⁷¹ See the Defence's First Request, *supra* note 2, paras. 60-74.

⁷² See, *inter alia*, ICTR, *The Prosecutor v. André Ntagerura, Emmanuel Bagambiki, Samuel Imianishimwe*, "Decision on the Prosecutor's request pursuant to Rule 99(B)", (Trial Chamber III), [ICTR-99-46-T](#), p. 2; See also, *The Prosecutor v. Bagosora, Kabiligi, Ntabakuze, Nsengiyumva*, "Decision on Prosecution Motion to impose Conditions on Kabiligi's Liberty", [ICTR-98-41-T](#), 31 December 2008, paras. 8 *et seq.*

political role of Mr Gbagbo,⁷³ are irrelevant for the purpose of the current proceedings and do not sustain an alleged violations of the Defendant's rights.

b) *The Defence's Second and Third Requests*

38. The Legal Representative opposes the Second and Third Requests because they are founded on the Defence's misunderstanding of the scope of the Defendant's rights under articles 67(1)(a) and (f) of the Statute. Moreover, in relation to the Second Request, the Defence also fails to show good cause to extend the time limit for its response to the Prosecution's Appeal Brief under regulation 35(2) of the Regulations of the Court, and does not sufficiently support its request to delay its response to the said Brief.

39. The Legal Representative opposes the apparent premise of the Second Request that the concept of "charge" used in article 67(1)(a) of the Statute must be broader than the concept *stricto sensu* of "charge" confirmed by the Pre-Trial Chamber, *i.e.* the facts, the legal characterisation and the mode(s) of liability referred to in the decision confirming the charges.⁷⁴

40. As already stated by the Pre-Trial Chamber in this case, a "charge" is composed of the facts underlying the alleged crime(s), as well as of its legal characterisation.⁷⁵ In this regard - while it appears to be no doubt that the decision confirming the charges defines the parameters of the charges at trial -⁷⁶ the written reasons of the Decision on acquittal, the Prosecution's Notice and the Appeal Brief cannot be treated as a ruling confirming the charges or an update thereof. In fact, the Trial Chamber stressed that "*regardless of whether the evidence to be relied on at trial by the Prosecution was used at the pre-trial stage, the facts and circumstances underlying the*

⁷³ See the Defence's First Request, *supra* note 2, paras. 65- 66.

⁷⁴ See the Defence's Second Request, *supra* note 3, paras. 4 *et seq.*

⁷⁵ See the "Decision on the date of the confirmation of charges hearing and proceedings leading thereto" (Pre-Trial Chamber I), No. [ICC-02/11-01/11-325](#), 17 December 2012, para. 25.

⁷⁶ See the "Public redacted Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction" (Appeals Chamber), No. [ICC-01/04-01/06-3121-Red A5](#), 1 December 2014, para. 124.

*charges against the accused remain unchanged, as outlined in the two Confirmation Decisions”.*⁷⁷

41. As conceded by the Defence of Mr Blé Goudé,⁷⁸ this approach is consistent with the fact that the European Court of Human Rights does not grant an absolute right to the Defendant to have his or her full case translated into his or her native language, but only the indictment and his or her own statements. The decisions listed in the Defence’s Second Request are no exception to the approach mentioned *supra*.⁷⁹ By way of example, Pre-Trial Chamber II in the *Bemba et al.* case expressly found that “*the accused shall not be served with all documents in a language he fully understands or speaks but only with those documents which are essential for his proper preparation to face the charges presented by the Prosecutor and which form the basis of the determination by the Chamber of those charges*”.⁸⁰

42. Against this background - and given that the Defendant can rely on a counsel able to work effectively in both working languages of the Court, and therefore able to address any doubt or concern that he may have -⁸¹ the Legal Representative submits that the translation of the three documents identified by the Defence is not compulsory, nor necessary, but merely convenient. In fact, the Appeals Chamber found that not even an amended document containing the charges submitted to the Trial Chamber before the start of the trial is a document which would require translation in accordance with the Court’s legal texts and article 67(1)(a) of the Statute in particular.⁸²

⁷⁷ See the “Order setting the commencement date for trial” (Trial Chamber I), No. [ICC-02/11-01/15-58](#), 7 May 2015 para. 18.

⁷⁸ See the transcript of the status conference held on 13 February 2015, No. [ICC-02/11-02/11-T-9-Red-ENG](#), p. 56, lines 20-24.

⁷⁹ See the Defence’s Second Request, *supra* note 3, paras. 37-48.

⁸⁰ See the “Decision on the ‘Defence request for an order requiring the translation of evidence’” (Pre-Trial Chamber II, Single Judge), No. [ICC-01/05-01/13-177](#), 11 February 2014, para. 6.

⁸¹ See the “Decision on Defence requests relating to the Prosecution’s Pre-Trial Brief” (Trial Chamber I), No. [ICC-02/11-01/15-224](#), 16 September 2019, para. 20.

⁸² See the “Public redacted Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction”, *supra* note 76, para. 131.

43. Following the Appeals Chamber's approach⁸³ - and consistently with her submission *supra* according to which the translations sought in the Requests do not relate to documents which would serve to inform the Defendants within the meaning of article 67(1)(a) of the Statute⁸⁴ - the Legal Representative opposes the Defence's Second and Third Requests to have the documents identified therein translated into a language fully understood by the Defendant.⁸⁵

44. In the same vein, the Second and Third Requests should be rejected as they amount to a misguided attempt to re-litigate issues already discussed and settled at the trial stage. As such, they should equally be dismissed as lacking any merit. In particular, in its Second Request,⁸⁶ the Defence seeks a suspension of the time limit to respond to the Prosecutor's Appeal Brief until obtaining the French translation of (i) Annexes B and C of the written reasons for the Decision on acquittal;⁸⁷ (ii) the Prosecution Notice of Appeal⁸⁸ and the Appeal Brief. In its Third Request,⁸⁹ the Defence seeks to obtain an order towards the Registry to provide without delay a French translation of the Prosecution's Trial Brief;⁹⁰ Mr Gbagbo's "*no case to answer*" motion⁹¹ and the Prosecution's Response thereto.⁹²

⁸³ See the "Decision on Mr Gbagbo's request for translation and an extension of time for the filing of a response to the document in support of the appeal" (Appeals Chamber), No. [ICC-02/11-01/11-489 OA5](#), 22 August 2013, para. 12.

⁸⁴ See *supra* paras. 38-40.

⁸⁵ See the Defence's Second Request, *supra* note 3 and the Defence's Third Request, *supra* note 4.

⁸⁶ See the Defence's Second Request, *supra* note 3.

⁸⁷ See the "Reasons for oral decision of 15 January 2019 on the *Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquiescement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée*, and on the Blé Goudé Defence no case to answer motion"; Annex B, "Reasons of Judge Geoffrey Henderson", and Annex C "Dissenting Opinion Judge Herrera Carbuca", *supra* note 25.

⁸⁸ See the "Corrected version of 'Prosecution Notice of Appeal', 16 September 2019, ICC-02/11-01/15-1270", No. [ICC-02/11-01/15-1270-Corr](#), 17 September 2019.

⁸⁹ See the Defence's Third Request, *supra* note 4.

⁹⁰ See the "Third Corrected version to Annex 1 of Prosecution's Mid-Trial Brief, 8 June 2018, ICC-02/11-01/15-1136-Conf-Anx1-Corr2", No. ICC-02/11-01/15-1136-Conf-Anx1-Corr3, 13 June 2018.

⁹¹ See the "Version corrigée de la 'Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquiescement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée.'", No. [ICC-02/11-01/15-1199-Corr](#), 25 September 2018.

⁹² See the "Prosecution's Response to Defence No Case to Answer Motions", No. [ICC-02/11-01/15-1207](#), 10 September 2018.

45. In this regard, the Legal Representative recalls that Trial Chamber I already discussed and rejected a similar request submitted by the Defence for Mr Gbagbo in respect to the Prosecutor's pre-trial⁹³ and the trial briefs.⁹⁴ In the two occasions, the Chamber clarified, *inter alia*, "that the statutory framework only required that the document containing the charges, the decision confirming the charges, the list of the evidence relied upon by the Prosecutor and the witnesses' statements be made available to the accused in a language he or she fully understands and speaks for him or her to be informed in detail of the nature and content of the charges within the meaning of article 67(1)(a) of the Statute".⁹⁵

46. In addition, in addressing a request for translation submitted by the Defence for Mr Gbagbo, the Appeals Chamber reiterated that "there is no general requirement that filings of parties and participants submitted in English be translated into French, or vice-versa, or that time limits begin to run from the notification of decisions or orders in both working languages of the Court"; and this "is also confirmed with respect to the language which a suspect fully understands or speaks by regulation 40(6) of the Regulations of the Court".⁹⁶

47. In light of the above, it is submitted that the Defence was, and still is, fully aware of the applicable law on translation of documents - other than the ones discussed *supra* -⁹⁷ and that the Second and Third Requests are yet another attempt to re-litigate the relevant regime on the provision to the Defence of fully translated documents.

48. As such, the Defence has not shown good cause in the sense of regulation 35(2) of the Regulations of the Court which could justify an extension of the time limit to respond to the Prosecution's Appeal Brief, nor it has provided valid

⁹³ See the "Decision on Defence requests relating to the Prosecution's Pre-Trial Brief", *supra* note 81.

⁹⁴ See the "Decision on the request for suspension of the time limit to respond to the Prosecutor's Trial Brief submitted by the Defence for Mr Gbagbo", *supra* note 47.

⁹⁵ *Idem*, para. 7, quoting the "Decision on Defence requests relating to the Prosecution's Pre-Trial Brief", *supra* note 93.

⁹⁶ See the "Decision on Mr Gbagbo's request for translation and an extension of time for the filing of a response to the document in support of the appeal", *supra* note 83, para. 10.

⁹⁷ See *supra* para. 45.

reasons to justify another delay in the conduct of the appeals proceedings. In this regard, the Appeals Chamber already found that “[a]ny departure from the time limits set by the Rules or Regulations of the Court must not derail the proceedings from their ordained course, requiring that they be conducted and concluded within a reasonable time”.⁹⁸

49. Lastly, turning to the arguments on the transcripts corrections dated 12, 13 and 14 November 2018, the Defence [REDACTED].⁹⁹

50. Pursuant to regulation 57 of the Regulations of the Registry, the Registry is the only organ of the Court formally in charge of “*provid[ing] interpretation, translation, editing and revision services*”. Moreover, according to regulation 65(1) of the same Regulations quality control and linguistic problems at hearing are strictly determined by said Regulations. In case of any misunderstandings or errors of interpretation, the relevant provision further indicates that the correction pertains to the interpreters and that a “*revised version is prepared by the interpretation and translation service within the Registry*”.¹⁰⁰

51. Ultimately it is the assessment and following corrections implemented by LSS that prevail and are authoritative. This conclusion can also be inferred from regulations 73 and 75 of the Regulations of the Registry which provide that an “[o]fficial Court translation’ shall only be used by the translation service of the Registry”¹⁰¹ and that “*where a translation provided to a requester gives rise to subsequent queries, the requester shall contact the Registry*”.¹⁰² This procedure was properly followed in the

⁹⁸ See the “Reasons for the ‘Decision on the ‘Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor’s Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation’” (Appeals Chamber), No. [ICC-01/04-01/07-653 OA7](#), 27 June 2008, para. 6; and the “Decision on the request for an extension of the time limit” (Appeals Chamber), No. [ICC-01/05-01/08-827 OA3](#), 15 July 2010, para. 10.

⁹⁹ See the Defence’s Third Request, *supra* note 4, paras. 74-75.

¹⁰⁰ See regulation 65(5) of the Regulations of the Registry (“RoR”): “*Where there are questions related to the accuracy of a translation used during a hearing, or if it becomes apparent that a translation used during a hearing contains errors, interpreters working at the hearing shall be requested to sight translate the original of the record until a revised version is prepared by the interpretation and translation service within the Registry*”.

¹⁰¹ See regulation 73(1) of the Regulations of the Registry.

¹⁰² See regulation 75(1) of the Regulations of the Registry.

present case; the Registry was solicited by the Defence and ruled on the requests for corrections tendered.¹⁰³ Consequently, the Defence's request [REDACTED] has no legal basis and must also be rejected.

IV. CONCLUSION

52. For the foregoing reasons, the Legal Representative respectfully requests the Appeals Chamber to reject the Defence's First, Second and Third Requests.



Paolina Massidda
Principal Counsel

Dated this 28th day of October 2019

At The Hague, The Netherlands

¹⁰³ See *supra* para. 26 and note 52.