

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: *English*

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

Date: **17 January  
2019**

**THE APPEALS CHAMBER**

**Before:**

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

**SITUATION IN COTE D'IVOIRE**

**IN THE CASE OF  
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLE GOUDE***

**Public**

**With Public Annexes 1 and 2**

**Defence Response to the Prosecution's urgent request for suspensive effect (ICC-02/11-01/15-1236 OA14)**

**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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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. Introduction

1. The Defence for Mr Charles Blé Goudé (“the Defence”) files the present response to the Prosecution’s urgent request for suspensive effect (“the Request”), embodied in its “Prosecution’s Appeal pursuant to article 81(3)(c)(ii) of the Statute and urgent request for suspensive effect” dated 16 January 2019.<sup>1</sup>
2. For the reasons developed below, and in the absence of particularly strong reasons in support of the Office of the Prosecutor (“the Prosecution”)’s urgent request for suspensive effect, the Defence submits that the statutory right of Mr Charles Blé Goudé to be released immediately after acquittal should prevail.

## II. Procedural History

3. On 15 January 2019, Trial Chamber I (“the Chamber”) acquitted Mr Laurent Gbagbo and Mr Charles Blé Goudé from all charges of crimes against humanity allegedly committed in Côte d’Ivoire in 2010 and 2011. The Chamber further suspended its order for immediate release of both acquitted persons until the following day, in light of the Prosecution’s expressed intention to avail itself the possibility to make a request pursuant to Article 81 (3) (c) (i) of the Rome Statute (“the Statute”).<sup>2</sup>
4. On the same day, the Prosecution filed its “*Urgent Prosecution’s request pursuant to article 81(3)(c)(i) of the Statute*”, submitting that there are exceptional circumstances for maintaining both Mr Laurent Gbagbo and Mr

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<sup>1</sup> *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, “Prosecution’s Appeal pursuant to article 81(3)(c)(ii) of the Statute and urgent request for suspensive effect”, 16 January 2019, ICC-02/11-01/15-1236.

<sup>2</sup> *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Transcript of 15 January 2019, ICC-02/11-01/15-T-232-ENG ET WT.

Charles Blé Goudé in detention pending appeal while requesting the Chamber to impose certain conditions on their release, subject to arrangements being made with a State willing or obliged to accept them.<sup>3</sup> On 16 January 2019, the Chamber dismissed the Prosecution's request and directed the Registry to obtain the necessary assurances in relation to Mr Laurent Gbagbo and Mr Charles Blé Goudé's appearance at the seat of the court, if and when requested ("Oral Decision").<sup>4</sup>

5. Later on 16 January 2019, the Prosecution challenged the Oral Decision before the Appeals Chamber pursuant to article 81(3)(c)(ii) of the Statute, rule 154(1) of the Rules of Procedure and Evidence ("RPE") and regulation 64 of the Regulations of the Court. The Prosecution also requested the Appeals Chamber to suspend Mr Charles Blé Goudé's release, relying on articles 82(3) of the Statute and rule 156(5) of the RPE.<sup>5</sup>
6. As per the Appeals Chamber's order dated 16 January 2019,<sup>6</sup> the Defence hereby responds to the Prosecution's urgent request for suspensive effect ("the Request").

### III. Standard of review

7. The Appeals Chamber in the case of *The Prosecutor v. Mathieu Ngudjolo Chui* has previously emphasized that "*the decision as to whether or not to grant*

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<sup>3</sup> *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, "Urgent Prosecution's request pursuant to article 81(3)(c)(i) of the Statute", 15 January 2019, ICC-02/11-01/15-1235, para. 31.

<sup>4</sup> *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Transcript of 16 January 2019, ICC-02/11-01/15-T-234-ENG ET WT, p. 6, lns 9-14.

<sup>5</sup> *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, "Prosecution's Appeal pursuant to article 81(3)(c)(ii) of the Statute and urgent request for suspensive effect", 16 January 2019, ICC-02/11-01/15-1236, paras 1-2.

<sup>6</sup> *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Appeals Chamber, "Order on the filing of responses to the request of the Prosecutor for suspensive effect", 16 January 2019, ICC-02/11-01/15-1237 OA14, p. 3.

*suspensive effect is always discretionary and depends upon the individual circumstances of the case. Suspensive effect is not automatic”.*<sup>7</sup>

8. Also, the Appeals Chamber has previously explained:

Article 82 (3) of the Statute provides that an appeal shall not have suspensive effect "unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence." [...] The decision on such a request is within the discretion of the Appeals Chamber. Therefore, when faced with a request for suspensive effect, the Appeals Chamber will consider the specific circumstances of the case and the factors it considers relevant for the exercise of its discretion under the circumstances.<sup>8</sup> [Footnote omitted.]

9. In exercising its discretion whether to order suspensive effect in a given case, the Appeals Chamber has previously recalled the exceptional nature of the continued detention of the acquitted person pending appeal: *“Particularly strong reasons for doing so must exist, which clearly outweigh Mr Ngudjolo’s statutory right to be released immediately following his acquittal”.*<sup>9</sup>

#### IV. Submissions

10. In the present circumstances, ordering suspensive effect would result in Mr Charles Blé Goudé being kept in detention pending the outcome of the Prosecution's appeal pursuant to article 81 (3) (c) (ii) of the Statute. Indeed, the Appeals Chamber has previously stated that: *"[s]uspension involves the non-enforcement of a decision, the subject of an appeal".*<sup>10</sup>

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<sup>7</sup> *Prosecutor v. Mathieu Ngudjolo Chui*, "Decision on the request of the Prosecutor of 19 December 2012 for suspensive effect", 20 December 2012, ICC-01/04-02/12 OA ("Ngudjolo's Appeals Decision"), para. 20.

<sup>8</sup> *Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on the Request of the Prosecutor for Suspensive Effect", 3 September 2009, ICC-01/05-01/08-499 (OA 2), para. 11, cited in the Ngudjolo's Appeals Decision, para. 18.

<sup>9</sup> Ngudjolo's Appeals Decision, para. 23.

<sup>10</sup> *Prosecutor v. Thomas Lubanga Dyilo*, "Decision on the admissibility of the appeals against Trial Chamber I's 'Decision establishing the principles and procedures to be applied to reparations' and directions on the further conduct of proceedings", 14 December 2012, ICC-01/04-01/06-2953 (A A 2 A 3 OA 21), para. 81.

11. Article 82 (3) of the Statute specifically provides that an appeal (including an appeal against a decision granting or denying release) "*shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request [...]*".
12. It is plain from the wording of article 81 (3) (c) of the Statute that the rule, in the case of an acquittal, is that the acquitted person "*shall be released immediately*". Continued detention may be ordered only "*[u]nder exceptional circumstances*". Thus, in the ordinary course of events, the acquitted person is to be released immediately, thereby respecting the fundamental right to liberty of the person. The Defence points out that the context of the present request is very different, as acknowledged by the Appeals Chamber in *Ngudjolo*,<sup>11</sup> from previous requests for suspensive effect which may have been granted. The present request is made in relation to a decision of acquittal, not a decision of interim release or stay of proceedings in the course of trial proceedings.<sup>12</sup> There is a natural right to be free in the case of an acquittal. Therefore, the standard of proof required to determine the existence of a concrete risk to abscond in the present case should be much higher than the standard of proof required in the context of decisions of interim release or stay of proceedings.
13. The Defence submits that there are no exceptional circumstances in this particular case and can only observe that the Prosecution has been unable to justify the existence of such circumstances. The main reason in support of the Prosecution's request is the assertion that not ordering suspensive effect could render its appeal against the Oral Decision as well as the appeal it intends to file against the decision of acquittal moot because Mr Charles Blé Goudé

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<sup>11</sup> Ngudjolo's Appeals Decision, para. 23.

<sup>12</sup> Ngudjolo's Appeals Decision, para. 21.

might abscond.<sup>13</sup> More specifically, the Prosecution alleges that the concrete risk that Mr Charles Blé Goudé would not appear at the seat of the court for the continuation of the proceedings “arises from, *inter alia*, (i) the risk of a lack of cooperation of some States to which the Accused could move to; and (ii) the availability to the Accused of sufficient means and supporters to help them avoid the Court’s jurisdiction”.<sup>14</sup>

14. As a preliminary comment, the Defence recalls that the present debate is limited to the issue of suspensive effect. Therefore, the Appeals Chamber is not presently required to address the Prosecution’s arguments regarding the risk of flight, which have to be considered in relation to the merits of the appeal against the Oral Decision. This was previously emphasized by the Appeals Chamber in its decision on the Prosecution’s urgent request for suspensive effect, following Mr Ngudjolo’s acquittal, in the case of *The Prosecutor v. Mathieu Ngudjolo Chui*.<sup>15</sup>

15. However, for the sake of clarity and completeness, the Defence will briefly respond to the Prosecution’s arguments, which are the exact same arguments it put forward (i) during the hearing of 13 December 2018 before the Chamber related to interim release discussions<sup>16</sup> and (ii) in its urgent request pursuant to article 81(3)(c)(i),<sup>17</sup> to which the Defence has already responded at length, and which the Chamber has addressed and considered before rendering its Oral Decision.

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<sup>13</sup> Request, paras 2, 22.

<sup>14</sup> Request, para. 23.

<sup>15</sup> Ngudjolo’s Appeals Decision, para. 24.

<sup>16</sup> *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Transcript of 13 December 2018, ICC-02/11-01/15-T-231-CONF-ENG ET.

<sup>17</sup> *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, “Urgent Prosecution’s request pursuant to article 81(3)(c)(i) of the Statute”, 15 January 2019, ICC-02/11-01/15-1235, para. 20.

16. The Defence submits that the Prosecution has failed to prove a concrete risk to abscond and not appear in court. As pointed out by the Chamber in the Oral Decision, no information has been provided as to the country Mr Blé Goudé will wish to reside, if and when released. The possibility that Mr Charles Blé Goudé would go back to Ivory Coast or to a state that would – as the Prosecution asserts – not cooperate with the Court is pure speculation on the part of the Prosecution.<sup>18</sup> Furthermore, regarding the Prosecution’s specific arguments in relation to Ivory Coast<sup>19</sup>, it is clear that the comment of Mr Alassane Ouattara not to be sending any more Ivorians to the Court must be interpreted as applying to persons other than Mr Laurent Gbagbo and Mr Charles Blé Goudé as the latter are the only Ivorians currently detained by the Court and Mr Alassane Ouattara’s statement was a clear reference to them. Therefore, the Prosecution has misinterpreted this fact.<sup>20</sup>

17. As far as other “non-cooperating” states are concerned, assuming *arguendo* Mr Charles Blé Goudé would reside in one of them, which is at this stage purely speculative, the Defence agrees with the Chamber’s reasoning in its Oral Decision that “[t]he fact that a State [...] may or may not fail to comply with a request for surrender does not necessarily mean that the persons in question will not appear voluntarily or on their own motion if summoned by the Court”.

18. The Prosecution alleges that “Mr Blé Goudé, like Mr Gbagbo, has a well-organised network of supporters – who include Mr Gbagbo’s supporters.”<sup>21</sup> First, it is the constant case law of the European Court of Human Rights that the danger of obstruction cannot be relied upon *in abstracto* but has to be

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<sup>18</sup> See Request, paras 24-25.

<sup>19</sup> Request, para. 25.

<sup>20</sup> Oral Decision, ICC-02/11-01/15-T-234-ENG ET WT, p. 2, ln 21 to p. 3, ln 5.

<sup>21</sup> Request, para. 28.

supported by factual evidence.<sup>22</sup> The Defence has already submitted that the Prosecution has never presented any concrete evidence, beyond mere speculations, as to the existence of the alleged network. This speculative approach is reiterated in the Request. The Prosecution only addresses the allegation as to the so-called “network” when it concerns Mr Gbagbo,<sup>23</sup> apart from references to outdated allegations on Mr Blé Goudé’s past conduct<sup>24</sup> for which the Chamber has already ruled, in the Oral Decision, that “[i]t would be unreasonable [...] to rely on these elements to justify the continued detention of a person who has just been acquitted.”<sup>25</sup>

19. Second, as the Appeals Chamber may legitimately question the existence of an alleged network dedicated to Mr Charles Blé Goudé, despite the lack of substantiation by the Prosecution in that regard, the Defence will address the matter in order to dispel any doubts. In a Decision on the interim release of Mr Gbagbo, issued on 10 March 2017, the Chamber provided a definition of the network, enshrined at paragraphs 15 and 16 of the said decision, notably:

“Although there is no evidence before the Chamber that these groups or individuals have acted at the behest of Mr Gbagbo, there is little doubt concerning their willingness to assist him in any way possible. While there are no specific indications that his supporters are willing to break the law for Mr Gbagbo’s sake, the Chamber cannot discount such a possibility.”<sup>26</sup>

20. From this definition it appears that the existence of supporters or fans of Mr Charles Blé Goudé cannot suffice to characterize a network. The mere fact that

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<sup>22</sup> ECHR, *Smirnova v. Russia* (Applications nos. 46133/99 and 48183/99), Judgment, 24 July 2013, paras. 60, 63; ECHR, *Merabishvili v. Georgia* (Application no. 72508/13), Judgment, 14 June 2016, para. 83; See also ECHR, *Nikolov v. Bulgaria*, no. 38884/97, 30 January 2003, para. 73, ECHR, *Becciev v. Moldova* (Application no. 9190/03), 4 January 2006, para. 58.

<sup>23</sup> Request, paras 26-27.

<sup>24</sup> Request, para. 28.

<sup>25</sup> Oral Decision, ICC-02/11-01/15-T-234-ENG RT, 16 January 2019, p. 4, lns 11-13.

<sup>26</sup> Trial Chamber I, 10 March 2017, ICC-02/11-01/15-846, paras 15-16 ; See also 25 September 2017, ICC-02/11-01/15-1038-Conf.

people admire and support Mr Charles Blé Goudé cannot suffice to attribute to these people a will to assist him by all means, including by breaking the law or obstructing the course of justice. Although it also transpires from the Decision issued by the Chamber on 10 March 2017 that it is not necessary to prove the criminal intent of the groups or the individuals under scrutiny, the existence of a network lies in the will of its groups or individuals to assist him by all means possible, including breaking the law. Such a will has never been proved by the Prosecution, neither at the hearing held on 13 December 2018 on interim release, nor in the current appeal proceedings.

21. Third, now that the Prosecution has closed its case and, most importantly that Mr Blé Goudé has been acquitted, any alleged risks of interference with the proceedings are non-existent.
22. In paragraphs 23 and 26 of its Request, the Prosecution, without any substantiation or facts, purports that Mr Charles Blé Goudé would have recourse to “sufficient means”. No evidence to this extent has been adduced by the Prosecution. Moreover, as Mr Charles Blé Goudé is declared by the Court as an indigent individual,<sup>27</sup> there is no factual foundation for this assertion.
23. The Defence submits that the risk to abscond is actually non-existent and Mr Charles Blé Goudé’s incentive to cooperate has been reinforced since the Chamber has ruled in favour of a full acquittal. The Defence’s arguments have been heard, the Chamber has observed that the Prosecution’s evidence was “exceptionally weak”,<sup>28</sup> and has ordered his immediate release. Having this information in mind, it would be illogical to attempt to abscond at this

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<sup>27</sup> See “Registration of the Registrar’s decision on the request for legal aid submitted by Mr. Charles Blé Goudé on 29 March 2014, and information provided to Counsel on the scope of legal assistance paid by the Court”, 8 May 2014, ICC-02/11-02/11-68, with public annex I.

<sup>28</sup> Oral Decision, ICC-02/11-01/15-T-234-ENG ET WT, p. 4, lns 3-5.

stage. There are on the contrary even more reasons for Mr Charles Blé Goudé to appear in court during an appeal's procedure to have his acquittal confirmed. In its "Decision on Mr Bemba's Application for Release" in the *Bemba and al.* case,<sup>29</sup> Trial Chamber VII found that Mr Bemba's knowledge of his conviction might be a factor that militates in favour of keeping him detained as a flight risk. *A contrario* in the present case, the Defence submits that Mr Charles Blé Goudé's knowledge of his acquittal militates in favour of releasing him immediately, as the probability of flight risk is insignificant and no longer apposite.

24. Moreover, Mr Charles Blé Goudé has given all the requested guarantees by signing a formal commitment to appear before the Court at any requested time and by having his lead counsel acting as a guarantor of such a commitment.<sup>30</sup> The Chamber in its Oral Decision specified that no information casted doubts as to the genuineness of these assurances.<sup>31</sup> In paragraph 22 of its Request, the Prosecution asserts that in the context of the alleged flight risk, there would be 'an irreversible situation that could not be corrected'. This argument does not hold water since Mr Charles Blé Goudé, as just mentioned, has signed an undertaking with his lead counsel that he will comply with any order of the judges of the Court in terms of returning to the Court for the purpose of participating to the proceedings. Therefore, there is no foundation for such an alleged 'irreversible situation'.

25. The question of the false identity documents allegedly in the possession of Charles Blé Goudé when arrested<sup>32</sup> cannot contribute to the existence of a

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<sup>29</sup> *The Prosecutor v. Jean-Pierre Bemba Gombo and al.*, "Decision on Mr Bemba's Application for Release", 12 June 2018, ICC-01/05-01/13-2291, para. 21.

<sup>30</sup> Oral Decision, ICC-02/11-01/15-T-234-ENG ET WT, p. 3, lns 15-20. *See also* ICC-02/11-01/15-T-233-ENG RT, p. 35, ln 14 to p. 36, ln 14.

<sup>31</sup> Oral Decision, ICC-02/11-01/15-T-234-ENG ET WT, p. 3, lns 19-20.

<sup>32</sup> Request, para. 28.

concrete flight risk. Apart from the fact that those documents were never introduced into evidence at trial by the Prosecution and therefore not subject to judicial scrutiny and review nor put to witnesses, there is no evidence that Mr Charles Blé Goudé ever used such identity documents. The Chamber has ruled that these were allegations, which dated back more than five (5) years ago, and that it would be unreasonable “to rely on these elements to justify the continued detention of a person who has just been acquitted”.<sup>33</sup> The Defence can only concur with the Chamber’s arguments. Furthermore, regarding the Prosecution’s allegations in relation the United Nations sanctions,<sup>34</sup> it omits to mention that on 19 February 2016, Mr Charles Blé Goudé voluntarily cooperated with the United Nations commission in the detention centre in The Hague in that he accepted to participate to an interview during which he responded to many questions from the United Nations representatives, including questions regarding the Malian passport<sup>35</sup>. Mr Charles Blé Goudé then explained that he never used it. Following that interview, all United Nations sanctions, including travel bans, were ultimately lifted by resolution 2283 dated 28 April 2016.<sup>36</sup> Therefore, the United Nations themselves considered that a travel ban was no longer necessary based *inter alia* on the clarification Mr Charles Blé Goudé gave to them in relation to the Malian passport, during the aforementioned interview. The UN ban issue has therefore been resolved years ago and should in no event support the allegation that Mr Charles Blé Goudé constitutes a flight risk. Furthermore, the reason why Mr Charles Blé Goudé fled to Ghana in March 2011 was to protect his life being threatened, as many Ivorian citizens who were subject to violence from the rebel forces. Mr Charles Blé Goudé was one out of many

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<sup>33</sup> Oral Decision, ICC-02/11-01/15-T-234-ENG ET WT, p. 3, ln 25 to p. 4, ln 1.

<sup>34</sup> Request, para. 28.

<sup>35</sup> See Annex 1, paras 178-179.

<sup>36</sup> See Annex 2.

who left Abidjan at that time to escape the violence which was reaching its peak. Witness P-0362 testified on 13 November 2017 in this respect.<sup>37</sup> The circumstances that led Mr Charles Blé Goudé to leave Ivory Coast, at a time where no arrest warrant had yet been issued against him, are therefore totally different from the present circumstances and again, do not support the allegation that a concrete risk to abscond justice could exist.

26. The Defence further recalls that the Appeals Chamber in the *Ngudjolo* case had rejected the Prosecution's urgent request for suspensive effect although there were allegations from the Prosecution that, *inter alia*, Mr Ngudjolo would have escaped from a DRC prison before a ruling from a domestic military tribunal on an indictment on war crimes against him was issued.<sup>38</sup> Having considered the Prosecution's aforementioned allegations, which the Defence notes were far more serious than the Prosecution's allegations in the present case, the Appeals Chamber yet ruled that it had not been persuaded that it should exercise its discretion to grant the request for suspensive effect.<sup>39</sup>
27. Finally, the decision to grant or reject the Request should also be weighed in light of the observation that the Oral Decision was well reasoned and motivated, which reflects on the prospect of success of the appeal on the merits.
28. Given the importance of the statutory right of Mr Charles Blé Goudé to be released immediately after acquittal, the Defence is of the view that the strength of the Prosecution's reasons given in support of its urgent request for

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<sup>37</sup> P-0362, ICC-02/11-01/15-T-207-CONF-FRA CT, p. 31, ln. 27 to p. 32, ln. 7; ICC-02/11-01/15-T-207-CONF-ENG CT, p. 30, lns. 2-9.

<sup>38</sup> *The Prosecutor v. Mathieu Ngudjolo*, "Prosecution's Appeal against Trial Chamber II's oral decision to release Mathieu Ngudjolo and Urgent Application for Suspensive Effect", ICC/01/04-02/12-5, 19 December 2012, para. 12.

<sup>39</sup> Ngudjolo's Appeals Decision, para. 24.

suspensive effect are nowhere near the required threshold to outweigh that right.

29. To conclude, in the absence of particularly strong reasons in support of the suspensive effect of the Oral Decision, and bearing in mind the exceptional nature of the continued detention of the acquitted person pending appeal, the Defence submits that Mr Charles Blé Goudé's right to be released immediately prevails.

### **RELIEF SOUGHT**

30. The Defence respectfully requests the Appeals Chamber to reject the Prosecution's urgent request for suspensive effect.

Respectfully submitted,



A rectangular box containing a handwritten signature in cursive script, which appears to be "M. Knoop".

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

Dated this 17 January 2019

At The Hague, the Netherlands