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No.: ICC-02/11-01/15
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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

**PUBLIC
With Annex A**

Prosecution's Response to "Notice of Charles Blé Goudé to exercise his right to make an oral unsworn statement pursuant to article 67(1)(h) of the Rome Statute"

Source: Office of the Prosecutor

Document 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 the Victims

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**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**

Other

Introduction

1. The Prosecution opposes Mr Charles Blé Goudé's notice to make an unsworn oral statement at the end of his Defence team's submissions on his no case to answer motion.¹ A no case to answer motion is a purely legal proceeding to be decided on the evidence currently submitted on the record of the case. Any unsworn statement of an accused during a no case to answer submission is unwarranted, as it is irrelevant to the decision-making process of the Chamber. The question to be decided at this stage is whether there is evidence on which a reasonable Chamber could convict. An accused cannot now try to "add" to the court record, or otherwise modify the evidentiary basis of the case, by making an unsworn statement in the context of a no case to answer. Mr Blé Goudé chose the procedural mechanism of a no case to answer. If his motion is rejected, Mr Blé Goudé will have the opportunity to present a defence and make an unsworn statement or even testify if he so wishes.

Procedural Background

2. On 14 November 2018, the Defence team for Mr Blé Goudé displayed a roadmap in court which indicated that Mr Blé Goudé was expected to make an oral intervention on 22 November 2018, during the hearing on the Defence no case to answer motions.² According to this roadmap, Mr Blé Goudé was scheduled to address the topic: "Presentation of evidence that Mr Blé Goudé did attempt to end the violence before and during the crisis." That same day the Prosecution, by electronic message to the Chamber with the Parties and participants in copy, (i) requested that the Defence for Mr Blé Goudé be ordered to ask for leave for Mr

¹ See ICC-02/11-01/15-1223 ("Notice of Charles Blé Goudé's intention to exercise his right to make an oral unsworn statement pursuant to article 67(1)(h) of the Rome Statute").

² ICC-02/11-01/15-T-226-Red-ENG, p. 35.

Blé Goudé's expected oral intervention,³ (ii) indicated its opposition to it and (iii) asked to be heard on the issue.⁴

3. On 19 November 2018, the Defence team for Mr Blé Goudé displayed an updated roadmap in court which indicated that Mr Blé Goudé was still scheduled to make an oral intervention on 22 November 2018, this time however by way of "closing word" or remarks. In an electronic message to the Chamber with the Parties and participants in copy, the Prosecution noted that the Defence should be ordered to file a notice on the matter in accordance with the Chamber's amended and supplemented directions on the conduct of the proceedings ("Directions").⁵
4. On 19 November 2018, the Defence filed the Notice of Charles Blé Goudé's intention to exercise his right to make an oral unsworn statement pursuant to article 67(1)(h) of the Rome Statute ("Notice").⁶

Submissions

1. It is not the appropriate stage for Mr Blé Goudé to be making an unsworn oral statement

5. The Prosecution opposes Mr Blé Goudé's intention, as evinced in the Notice, to make an unsworn oral statement under article 67(1)(h) of the Statute at this stage in the proceedings, and requests that the Chamber exercise its discretion under the Directions and rule that this is not the appropriate moment for such a statement.
6. A submission of a no case to answer is purely legal in nature. It is designed to address the sufficiency of the evidence submitted in the record of the case.⁷ Mr

³ E-mail of 14 November 2018 at 14h30.

⁴ E-mail of 14 November 2018 at 12h52.

⁵ E-mail of 19 November 2018 at 09h56, citing ICC-02/11-01/15-498-AnxA, para. 7.

⁶ ICC-02/11-01/15-1223.

⁷ See e.g.: Second Order on the further conduct of the proceedings, ICC-02/11-01/15-1174, para. 13: "These submissions will assist the Chamber in determining whether the evidence presented by the Prosecutor suffices to warrant the continuation of the trial proceedings and hear evidence from the accused, or whether the Chamber should immediately make its final assessment in relation to all or parts of the charges."

Blé Goudé is represented by Counsel, and it is Counsel's submissions at this procedural stage that will be most helpful for the Chamber to adjudicate the no case to answer motion.⁸ Any statement by Mr Blé Goudé – whether sworn or unsworn – is not a legal submission. It is therefore incapable of assisting the Chamber in any meaningful way, and will only unnecessarily prolong proceedings. At the same time, such a statement cannot appropriately form part of the *evidence* to be considered by the Chamber. Indeed, the question to be decided by the Chamber is whether there is evidence on which a reasonable Chamber could convict. An accused cannot now try to “add” to the court record, or otherwise modify the evidentiary matrix of the case, by making an unsworn statement in the context of a “no case to answer” litigation.

7. The wording of the Directions suggests that the appropriate time for an article 67(1)(h) statement in these proceedings is during the Defence case. It has been the practice of this Court to allow article 67(1)(h) statements at the conclusion of the Defence case – during closing arguments (*e.g.*: *Lubanga*,⁹ *Katanga* and *Ngudjolo*,¹⁰ *Ntaganda*,¹¹ *Babala* and *Kilolo (Bemba Article 70)*.¹² In a few instances, the accused have also addressed the court during opening statements (*e.g.*: *Ntaganda*),¹³ including Mr Blé Goudé himself.¹⁴
8. In any event, and in accordance with its Directions, the Chamber should exercise its discretion to find that now is not the appropriate moment for the statement to be made. In the *Bemba* case, the Defence requested that the accused make an unsworn statement directly after the last Defence witness. The Chamber in that

⁸ See also regulation 74(2) of the Regulations of the Court, which provides that “[w]henever represented by defence counsel, the person entitled to legal assistance shall, subject to article 67, paragraph 1 (h), act before the Court through his or her counsel, unless otherwise authorised by the Chamber.”

⁹ ICC-01/04-01/06-T-356-ENG, p. 2; see also ICC-01/04-01/06-T-357-ENG-ET, pp. 48-49 for the unsworn statement.

¹⁰ See ICC-01/04-02/12-3-tENG, para. 25 [for *Ngudjolo*]; see ICC-01/04-01/07-T-340-ENG, pp. 48-61 [for *Katanga* and *Ngudjolo*].

¹¹ See ICC-01/04-02/06-T-264-Red2-ENG, pp. 61-67.

¹² See ICC-01/05-01/13-T-48-Red-ENG, pp. 111-119; ICC-01/05-01/13-T-49-Red-ENG, pp. 55-65.

¹³ See ICC-01/04-02/06-T-24-ENG-ET, pp. 74-76.

¹⁴ See ICC-02/11-01/15-T-12-Red-ENG, pp. 66-79.

case noted that “the statutory framework affords the accused the opportunity to make an unsworn statement at an appropriate moment, subject to the Chamber’s discretion as to timing and modality.” The Chamber found that “[i]n the interest of expeditiousness of the proceedings in accordance with Article 64(2) of the Statute and in line with the jurisprudence of other Chambers of this Court, the Chamber considers it appropriate for the unsworn statement to be given as part of the presentation of the closing statement by the defence pursuant to Rule 141(2) of the Rules.”¹⁵ Similarly, in the interest of expeditious proceedings, this Chamber should also exercise its discretion for the statement to be made at a later stage.

9. As noted, Mr Blé Goudé has already had the opportunity to address this Chamber during the opening statements and before the Pre-Trial Chamber at the confirmation hearing. The Chamber is to decide his motion based on the evidence on record. If his motion is rejected, Mr Blé Goudé will have ample opportunity to present a defence, including testifying if he so wishes.
10. Finally, the Prosecution submits that the Chamber should not allow Mr Blé Goudé to make an unsworn statement at this stage to protect the integrity and expeditious nature of the proceedings. Considering Mr Blé Goudé’s recent contact with the Ivoirian press, there is also a risk that he will use these proceedings as a “political tool or instrument.”¹⁶ On 19 November 2018, Arouna Sylla reported in the newspaper *Soir Info* that they had been told by Mr Blé Goudé on 30 October 2018 that Mr Blé Goudé would address the court and all those following the procedure (“*Il s’adressera (...) à la Cour et à tous ceux qui suivent ce procès pour acquittement*”) on 22 November 2018 or the day before.¹⁷ Mr Blé

¹⁵ ICC-01/05-01/08-2860, para. 7. Eventually the Defence informed the Chamber that the Accused would not be making an unsworn statement during closing arguments – see ICC-01/05-01/08-3191, para. 5.

¹⁶ At the opening of the trial, the Presiding Judge stated that: “the Chamber will not allow this trial to be used as a political tool or instrument in any way whatsoever” (ICC-02/11-01/15-T-9-ENG, p. 3).

¹⁷ See Annex A (*Soir Info* n.7229 du lundi 19 et mardi 20 novembre 2018: “A la fin de la plaidoirie de ses avocats, Blé Goudé veut casser la baraque”). See also, dated 13 November 2018

Goudé promised to '*casser la baraque*', as he did at the end of his confirmation hearing ("*comme il l'avait fait le jeudi 2 octobre 2014, à la fin de l'audience de confirmation des charges*").

Relief Requested

11. The Prosecution requests the Chamber to rule that Mr Blé Goudé should not make an unsworn oral statement at this juncture.



Fatou Bensouda, Prosecutor

Dated this 20th day of November 2018

At The Hague, The Netherlands