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

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. CHARLES BLÉ GOUDÉ***

Public

Consolidated response to the Defence's submission requesting an extension of time to file a response to the Prosecution's joinder request (ICC-02/11-02/11-201) and to the Defence's request to postpone the status conference scheduled for 13 February 2015 (ICC-02/11-02/11-204)

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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(Participation/Reparation)**

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Other

I. PROCEDURAL BACKGROUND

1. On 11 December 2014, Pre-Trial Chamber I, by majority, issued a decision confirming the charges against Mr. Blé Goudé under article 61(7)(a) of the Rome Statute and committed him for trial (the “*Blé Goudé Confirmation Decision*”).¹ On 20 December 2014, the Presidency referred the case of *The Prosecutor v. Charles Blé Goudé* to Trial Chamber I (the “*Chamber*”).²

2. On 22 December 2014, the Prosecutor filed a request for the joinder of the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* (the “*Joinder Request*”).³

3. On 6 January 2015, pursuant to the withdrawal of Mr. Blé Goudé’s former counsel, the Chamber granted the Defence an extension of the deadline for any response to the Joinder Request to 21 days from the notification of the French translation of both the Joinder Request and the *Blé Goudé Confirmation Decision* (the “*Withdrawal and Time Extension Decision*”).⁴

4. On 20 and 21 January 2015 respectively, the French versions of the Confirmation Decision⁵ and of the Joinder Request⁶ were notified to the Defence,

¹ See the “Decision on the confirmation of charges against Charles Blé Goudé” (Pre-Trial Chamber I), No. ICC-02/11-02/11-186, 11 December 2014.

² See the “Corrigendum to the ‘Decision referring the case of *The Prosecutor v. Charles Blé Goudé* to Trial Chamber I’, ICC-02/11-02/11-193, 20 December 2014 (registered on 22 December 2014)” (Presidency), No. ICC-02/11-02/11-193-Corr, 22 December 2014 (dated 20 December 2014).

³ See the “Prosecution’s Request to join the cases of *The Prosecutor v. Laurent GBAGBO* and *The Prosecutor v. Charles BLE GOUDÉ*”, No. ICC-02/11-02/11-194, 22 December 2014 (the “*Joinder Request*”).

⁴ See the “Decision on ‘Counsel’s request to withdraw pursuant to Regulation 78(1) of the Regulations of the Court’ and extension of deadline for response” (Trial Chamber I), No. ICC-02/11-02/11-197, 6 January 2015 (the “*Withdrawal and Time Extension Decision*”). See also, in the *Gbagbo* case, the “Decision on the Defence challenge to the Chamber’s competence to hear the Prosecution’s Joinder Request and on its request for a variation of the response deadline” (Trial Chamber I), No. ICC-02/11-01/11-744, 6 January 2015.

⁵ See the “Décision relative à la confirmation des charges portées contre Charles Blé Goudé” (Pre-Trial Chamber I), No. ICC-02/11-02/11-186-tFRA, 20 January 2015.

thereby setting the deadline for the Defence's response to the Joinder Request on 12 February 2015.

5. On 23 January 2015, the Chamber ruled that a status conference shall be held on 13 February 2015.⁷

6. On 26 January 2015, the Defence filed an urgent submission related to the need to have adequate time and facilities for trial preparation, including a request for a new extension of time to respond to the Joinder Request (the "Defence's Request").⁸

7. On 28 January 2015, the Single Judge issued the "Order reducing the time limit to file responses to ICC-02/11-02/11-201", setting the deadline of 2 February 2015 for the Prosecution and the Legal Representative of Victims to respond to the Defence's Request for extension of time to respond to the Joinder Request, and deciding that responses to the remainder of the Defence's Request shall be made in the context of submissions prior to and during the status conference of 13 February 2015.⁹

8. On 29 January 2015, the Defence filed a submission requesting, *inter alia*, the adjournment of the status conference scheduled for 13 February 2015 (the "Defence's Second Request").¹⁰

⁶ See the "Demande de jonction des affaires *Le Procureur c. Laurent Gbagbo et Le Procureur c. Charles Blé Goudé*", No. ICC-02/11-01/11-738-tFRA, 21 January 2015.

⁷ See the "Order scheduling a status conference and setting a provisional agenda" (Trial Chamber I), No. ICC-02/11-02/11-200, 23 January 2015, para. 5.

⁸ See the "Urgent Defence Submissions on the Need to Have Adequate Time and Facilities to Prepare for Trial and Extension of Time to Respond to Joinder Request", No. ICC-02/11-02/11-201, 26 January 2015 (the "Defence's Request").

⁹ See the "Order reducing the time limit to file responses to ICC-02/11-02/11-201" (Trial Chamber I, Single Judge), No. ICC-02/11-02/11-202, 28 January 2015.

¹⁰ See the "Defence Submissions on 'Order scheduling a status conference and setting a provisional agenda'", No. ICC-02/11-02/11-204, 29 January 2015 (the "Defence's Second Request").

9. On 30 January 2015, the Single Judge granted the Prosecution's request to postpone, *inter alia*, the deadline for the submission of responses to the Defence's Request and to the Defence's Second Request until 4 February 2015.¹¹

10. In accordance with the Chamber's orders and pursuant to regulation 24(2) of the Regulations of the Court, the Principal Counsel of the OPCV, acting as Common Legal Representative of the victims authorised to participate in the proceedings (the "Common Legal Representative"),¹² submits a consolidated response to the Defence's Request and the Defence's Second Request.

II. CONSOLIDATED RESPONSE

a. The Defence's Request must be rejected

i. The Defence does not demonstrate "good cause" for the extension of the time-limit

11. The Common Legal Representative submits that the Defence's Request does not demonstrate good cause in support of an additional extension of time in accordance with regulation 35(2) of the Regulations of the Court, and consequently, must be rejected.

12. The Common Legal Representative submits that the arguments put forward by the Defence in support of its Request have already been taken into account by the Chamber when extending *proprio motu* the time-limit for the Defence to file its

¹¹ See the "Decision on the Prosecution request for extension of time and on the response deadline for ICC-02/11-02/11-204" (Trial Chamber I, Single Judge), No. ICC-02/11-02/11-205, 30 January 2015.

¹² See the "Decision on victims' participation in the pre-trial proceedings and related issues" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-83, 1 June 2014, pp. 22-23; and the "Second Decision on victims' participation in the pre-trial proceedings and related issues" (Pre-Trial Chamber I, Single Judge), No. ICC-02/01-02/01-111, 1 August 2014, pp. 13-15.

response to the Joinder Request.¹³ Accordingly, the Common Legal Representative contends that the Accused's rights have been properly protected by the Chamber and that the Defence disposes of sufficient time for the purpose of preparing said response.

13. Furthermore, the Common Legal Representative underlines that the Defence not only requests the extension of the time-limit previously extended by the Chamber to respond to the Joinder Request, but also the extension, on the one hand, of the prescribed time-limit enshrined in regulation 34(b) of the Regulations of the Court (from 21 days to 30 days) and, on the other hand, of the starting time of said requested extension (*"from the time the trial chamber may have granted defence with the extension of time to first study the material in the Gbagbo and Blé Goudé case"*).¹⁴

ii. The rights of the Defence have already been duly taken into account by the Chamber in relation to the filing of a response to the Joinder Request

14. The Common Legal Representative notes that the Chamber already held that *"the two defence teams are [...] currently able to respond to the Prosecution's request to join the cases."*¹⁵ In the same decision, the Chamber also acknowledged *"the potential impact the Chamber's decision [on the joinder of the cases] could have on the conduct of proceedings and the rights of the accused"* and that *"requested translations are necessary for the requirements of fairness"*.¹⁶ In addition, the Chamber also further considered that *"an extension of this response deadline [the deadline to respond to the Joinder Request] [was] therefore in the interests of justice"*, in light of the appointment of a new counsel for Mr. Blé Goudé.¹⁷

¹³ See the Withdrawal and Time Extension Decision, *supra* note 4, para. 11.

¹⁴ See the Defence's Request, *supra* note 8, para. 47.b).

¹⁵ See, in the *Gbagbo* case, the "Decision on the Defence challenge to the Chamber's competence to hear the Prosecution's Joinder Request and on its request for a variation of the response deadline", *supra* note 4, para. 9.

¹⁶ *Idem*, para. 10.

¹⁷ See the Withdrawal and Time Extension Decision, *supra* note 4, para. 11.

15. It is therefore clear that the Chamber took into consideration the rights of the Accused and the interests of justice by extending, *proprio motu*, the deadline for the Defence to respond to the Joinder Request from 13 January 2015 (initial deadline under regulation 24 of the Regulations of the Court) to 12 February 2015. The Common Legal Representative further notes that this extended time-limit provides Mr. Knoops, appointed as Mr. Blé Goudé's counsel on 9 January 2015 following his previous position of *pro bono* associate counsel to Mr. Blé Goudé's former counsel,¹⁸ with more time than the extension requested by Mr. Blé Goudé's former counsel on 24 December 2014. Indeed, the latter "*requested that the time limit for the response to the Joinder Application commence from the date of the formal appointment of new counsel 'lest [Mr Blé Goudé's] rights be irreversibly prejudiced'*".¹⁹ This element was taken into account by the Chamber in extending *proprio motu* the time-limit to respond to the Joinder Request, and instead of granting 21 days from the appointment of the new counsel, which would have moved the deadline for a response to 2 February 2015, the Chamber granted 21 days from the notification of the French translations of the core material the Chamber deemed necessary for the requirements of fairness,²⁰ *de facto* giving 10 additional days to the Defence to prepare its response.

16. Furthermore, the Common Legal Representative observes that it appears that there was no prejudicial gap²¹ in the legal representation of Mr. Blé Goudé between

¹⁸ See the "Enregistrement de la désignation et de la prestation de serment de Maître Geert-Jan Alexander Knoops en qualité de conseil adjoint dans l'équipe de la défense de M. Charles Blé Goudé", No. ICC-02/11-02/11-147, 9 September 2014. See also the "Notification of the appointment of counsel for Mr Charles Blé Goudé", No. ICC-02/11-02/11-198, 9 January 2015, para. 2; and the Defence's Request, *supra* note 8, para. 13.

¹⁹ See the Withdrawal and Time Extension Decision, *supra* note 4, para. 7.

²⁰ *Idem*, para. 12. See also, in the *Gbagbo* case, the "Decision on the Defence challenge to the Chamber's competence to hear the Prosecution's Joinder Request and on its request for a variation of the response deadline", *supra* note 4, para. 10.

²¹ The Common Legal Representative notes that the Registry indicated on 22 December 2014 that "*new counsel would be ready to be appointed upon the excusal of Mr Kaufman, and that there would be no gap in the legal representation of Mr Blé Goudé*". See the Withdrawal and Time Extension Decision, *supra* note 4, para. 4 and footnote 6, which refers to the "Email communication from Legal Officer of the Registry to Trial Chamber I on 22 December 2014 at 12:38". See also the Defence's Request, *supra* note 8, Confidential Annex 1.

Mr. Kaufman's withdrawal²² and Mr. Knoops' appointment,²³ and that the Chamber issued the appropriate directions to the Registry to ensure that Mr. Blé Goudé "*is represented by counsel at all times*".²⁴ In addition, the Common Legal Representative respectfully highlights once again the fact that Mr. Knoops was previously part of the legal representation team of Mr. Blé Goudé as a *pro bono* associate counsel. In fact, during the confirmation hearing Mr. Knoops served as a *pro bono* associate counsel to Mr. Blé Goudé's former counsel and Mr. N'Dry served as legal assistant to the Defence team.²⁵ As such, the latter was granted access to all e-Court applications already on 25 August 2014 and the former gained access to said applications on 16 September 2014.²⁶ Accordingly, both counsels have had access to the record of the proceedings, including the evidence disclosed between the Prosecution and the Defence, for over four months.

17. In this regard, the Common Legal Representative notes the presentation made by Mr. Knoops in relation to his access to case material.²⁷ The Common Legal Representative submits nonetheless that the situation of Mr. Knoops cannot be compared to the situation of a newly appointed counsel in as much as Mr. Knoops is already familiar with the case and with the Accused, is also familiar with the legal texts of the Court, and has already gained first-hand experience and knowledge of the case and the proceedings of the Court by participating in the confirmation of charges hearing, which also involves a familiarity with the procedural rules of the Court as shown by the Defence's Request.

²² See the "Decision on 'Counsel's request to withdraw pursuant to Regulation 78(1) of the Regulations of the Court' and extension of deadline for response", *supra* note 4.

²³ See the "Notification of the appointment of counsel for Mr Charles Blé Goudé", *supra* note 18. See also No. ICC-02/11-02/11-198-Conf-AnxIII and No. ICC-02/11-02/11-198-AnxVI; and the Defence's Request, *supra* note 8, Confidential Annex 1.

²⁴ See the Withdrawal and Time Extension Decision, *supra* note 4, para. 10.

²⁵ See the "Defence submission on the schedule for the confirmation hearing", No. ICC-02/11-02/11-156, 19 September 2014, para. 6.

²⁶ See the email sent by the Registry on 3 February 2014 at 16h04 following instructions by the Chamber.

²⁷ See the Defence's Request, *supra* note 8, paras. 13 and 43.

iii. *The Defence's Request is disproportionate, runs against the right of all participants to a fair and expeditious trial and is contrary to the interests of justice*

18. Without prejudice to her position with regard to the remainder of the Defence's Request, the Common Legal Representative submits that the Defence's Request is disproportionate. Indeed, the Defence demands in addition to a new extension of 30 days, that the time-limit starts running from the completion of the "study period" of all the material in the two cases, identified by the Defence in "[a]t least 6 months".²⁸ The Common Legal Representative underlines that responding to the Joinder Request does not stand the comparison proposed by the Defence to the heavy burden of preparing a confirmation hearing or complex and novel issues which have been considered as constituting good causes by other Chambers of the Court to grant an extension of time.²⁹

19. The Common Legal Representative further notes that in light of the Withdrawal and Time Extension Decision, the Defence is already in a position to address the Joinder Request, based on his knowledge of the case to date³⁰ and essentially on its reading of the *Blé Goudé* Confirmation Decision and of the Joinder Request itself, translations of which were expressly provided in French as ordered by the Chamber specifically for this purpose.³¹ Contrary to what the Defence appears to

²⁸ *Idem*, para. 23.

²⁹ *Ibid.*, paras. 38 and 40.

³⁰ In addition, in a previous decision, the Pre-Trial Chamber considered already that "*Charles Blé Goudé* [was] presently already in a position [on 12 December 2014], bearing in mind the assistance of his counsel [one of which was already Mr. Knoops], to understand the main findings of the Chamber and to determine whether and to what extent to appeal the Decision [the Confirmation Decision]." On this basis, the Pre-Trial Chamber rejected a request for extension of time previously submitted by the Defence. See the "Decision on the 'Defence application for variation of the time limit for seeking leave to appeal the Decision on the Confirmation of Charges'" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-190, 12 December 2014, paras. 9-10.

³¹ The Common Legal Representative recalls that the Trial Chamber deemed it appropriate to extend the previous time-limit set for the Defence's response to the Joinder Request based only on the availability of French translations to both the Joinder Request itself, and the Confirmation Decision in

believe, it is not “bound to analyse [...] the voluminous and complex case against Mr. Blé Goudé [and] also the equally dense case against Mr. Gbagbo” in order to prepare its response to the Joinder Request.³² To the contrary, the Common Legal Representative submits that once the Defence responds to the Joinder Request, thus allowing the Chamber to issue a Decision on said request, more clarity will be provided about the setting and content of the case in order for the Chamber, the parties and the participants to organise their preparation for the trial in the most useful and efficient way, and implementing the principle of fair trial.

20. In this regard, the Common Legal Representative highlights the pre-existing jurisprudence of the Court in relation to the joinder of cases and, in particular, the decision in the *Katanga* case, whereby the Single Judge, after having duly taken into account the availability to the Defence of the “necessary information to effectively address the issue of joinder of the cases” [i.e. a redacted version of the Prosecution’s Applications, unredacted versions of the warrants of arrest and unredacted versions of the First and Second Decisions on Evidence and Information], and the fact that the “factual basis of charges alleged by the Prosecution [in both cases] are the same”, decided that Mr. Ngudjolo Chui’s counsel would have seven (7) days from the date of his appointment to file written observations on the issue of joinder.³³

21. In the present instance, it is worth recalling that Mr. Knoops has been part of the Defence team for almost 5 months. Moreover, the Common Legal Representative notes that the Joinder Request is a clear and thorough document, only 12 pages long,

the current case. By so doing, the Chamber already determined what information is necessary for the Defence to be in a position to respond to the Joinder Request. See the Withdrawal and Time Extension Decision, *supra* note 4. The *Gbagbo* Confirmation Decision is equally available as a key instrument for the Defence and the Accused should they deem it necessary. See the “Decision on the confirmation of charges against Laurent Gbagbo” (Pre-Trial Chamber I), No. ICC-02/11-01/11-656-Red and No. ICC-02/11-01/11-656-Red-tFRA, 12 June 2014.

³² See the Defence’s Second Request, *supra* note 10, para. 1.

³³ See the “Decision concerning the issue of joinder, ordering a report on protective measures by the Registrar and convening a hearing” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/07-214, 20 February 2008, pp. 6-8. See also the “Decision concerning the issue of joinder, ordering a report on protective measures by the Registrar and convening a hearing” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/07-291, 20 February 2008.

which adequately informs the Chamber, the Defence and the Common Legal Representative of the crucial issues related to a possible joinder of the cases and which points out, especially, that *“the charges confirmed against [both accused] are largely the same”*, that the two accused *“shared a common plan or purpose and acted jointly to implement this plan, which led to the attack against the civilian population, in the context of which the crimes charged in both cases were committed”* and that *“the vast majority of the witnesses and other evidence to be relied upon by the Prosecution relates to both accused”*.³⁴

22. The Common Legal Representative also wishes to draw the attention of the Chamber to its duty to take appropriate measures to protect the well-being and dignity of the victims under article 68(1) of the Rome Statute and in doing so, to ensure that the proceedings are conducted in an expeditious manner and that the trial starts as soon as practicable.³⁵ Noting that the rights of the Defence have been duly and properly protected by the Chamber to date, the Common Legal Representative submits that the proceedings ought to follow their course and that the Defence’s Request for an additional extension of time to respond to the Joinder Request must be rejected.

23. Finally, the Common Legal Representative submits, on behalf of the victims, that it is in the interest of all the parties and participants, and in compliance with the principle of a fair trial and in the interests of justice that the setting of the trial be determined as soon as possible,³⁶ and that the proceedings in relation to the Joinder Request promptly lead to a final decision on this issue. Indeed, the Common Legal Representative submits that the proper preparation of the trial will more realistically

³⁴ See the Joinder Request, *supra* note 3, para. 1.

³⁵ As the Assembly of States Parties has recently emphasised, victims have a right *“to expeditious and effective access to justice, protection and support, adequate and prompt reparation for harm suffered, and access to relevant information concerning violations and redress mechanisms”*, all of which *“are essential components of justice”*. See ASP, Resolution ICC-ASP/12/Res.5, Victims and affected communities, reparations and Trust Fund for Victims, 27 November 2013, p. 1.

³⁶ See articles 64(2), 64(3)(a) and 64(8)(b) as well as article 67(1)(a) of the Rome Statute.

and efficiently start once the Chamber receives all the submissions and is in a position to issue a prompt decision on the matter.

b. The Defence's Second Request must be rejected

24. In relation to the Defence's Second Request to postpone the status conference to be held on 13 February 2015,³⁷ the Common Legal Representative submits that the issues raised by the Defence would be more properly dealt with in the course of said status conference.

25. The Common Legal Representatives observes that the Defence's Second Request demonstrates all the more the need for the Chamber to hold the status conference as planned, in order to start addressing the issues in preparation for the trial, and in order to allow constructive and useful exchanges of views and information between the parties and the participants.

26. In this regard, the Common Legal Representative reiterates that she finds the Defence's Request and the Defence's Second Request premature as much as the Prosecution still has not had the opportunity to provide more information concerning notably the timing, volume and modalities of disclosure of evidence, and the Chamber still has not had the possibility to assess the factors to be considered in the course of the scheduled status conference with the aim of setting a provisional date for the start of the trial. Absent such a dialogue between the parties and participants and before the Chamber, the Common Legal Representative submits that each and every request for the suspension or extension of a deadline that the Defence may make will continue to lack proper ground and context.

³⁷ See *supra* note 10.

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Trial Chamber to reject the Defence's Request and the Defence's Second Request.

A handwritten signature in black ink, reading "Paolina Massidda", with a horizontal line underneath.

Paolina Massidda
Principal Counsel

Dated this 4th day of February 2015

At The Hague, The Netherlands