

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: **22 September 2021**

**ARTICLE 85 CHAMBER**

**Before:** Judge Reine Alapini-Gansou  
Judge Joanna Korner  
Judge Sergio Gerardo Ugalde Gordínez

**SITUATION IN COTE D'IVOIRE**

**IN THE CASE OF**

***THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ***

**Public**

**Public Redacted Version of “Blé Goudé Defence consolidated response to the ‘Prosecution response in relation to Mr Blé Goudé’s request for a hearing in relation to article 85(3) of the Statute and further request to set a timetable for litigation’ (ICC-02/11-01/15-1414) and motion to strike the ‘Victims’ Response to Mr Blé Goudé’s request for a hearing pursuant to rule 174(2) of the Rules of Procedure and Evidence’ (ICC-02/11-01/15-1415)”, ICC-02/11-01/15-1417-Conf-Exp, 22 September 2021**

**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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(Participation/Reparation)

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**Victims Participation and Reparations Section**      **Other**

## I. INTRODUCTION

1. The Defence of Mr Charles Blé Goudé (the “Defence”) hereby presents its response to the Office of the Prosecutor’s (the “Prosecution”) “Prosecution response in relation to Mr Blé Goudé’s request for a hearing in relation to article 85(3) of the Statute and further request to set a timetable for litigation”<sup>1</sup> (the “Prosecution Submissions”) and files a motion to strike the Legal Representative of Victims (the “LRV”) “Victims’ Response to Mr Blé Goudé’s request for a hearing pursuant to rule 174(2) of the Rules of Procedure and Evidence”.<sup>2</sup>
2. *First*, in response to the Prosecution’s submissions, the Defence requests the Chamber to reject the Prosecution’s novel request for an extension of time, as this request is unreasonable and lacks substantiation. *Second*, the Defence submits its motion to strike the LRV’s response from the case record as the victims have no standing in the article 85 proceedings under the International Criminal Court’s (the “Court”) statutory framework and jurisprudence.

## II. PROCEDURAL HISTORY

3. On 9 September 2021, Mr Blé Goudé filed a request for compensation pursuant to article 85(3) of the Rome Statute (the “Request”) seeking compensation for the damages incurred by him due to a grave and manifest miscarriage of justice.<sup>3</sup>
4. On 14 September 2021, the Presidency of the Court rendered its “Decision constituting a chamber and referring a request arising under article 85 concerning ‘Public Redacted Version of “Mr Blé Goudé’s Request for Compensation pursuant to Article 85(3) of the Rome Statute” (ICC-02/11-01/15-1411-Conf-Exp), 9 September 2021’ dated 9 September 2021 (ICC-02/11-01/15-1411-Red)”.<sup>4</sup>

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<sup>1</sup> ICC-02/11-01/15-1414.

<sup>2</sup> ICC-02/11-01/15-1415.

<sup>3</sup> ICC-02/11-01/15-1411-Red.

<sup>4</sup> ICC-02/11-01/15-1413.

5. On 17 September 2021, the Prosecution filed its Submissions in response to the Request, requesting a hearing in relation to article 85(3) of the Rome Statute and further requesting an extension of time to file its response to the Request.<sup>5</sup>
6. On 20 September 2021, the LRV filed the “Victims’ Response to Mr Blé Goudé’s request for a hearing pursuant to rule 174(2) of the Rules of Procedure and Evidence” (the “LRV Response”).<sup>6</sup>

### III. SUBMISSIONS

#### *a. Defence’s response to the Prosecution’s request for an extension of time*

7. As a preliminary matter, the Defence is entitled to provide its response to the Prosecution’s Submissions given the Submissions do not amount to a “response” within the meaning of regulation 24 of the Regulations of the Court. Rather, the Submissions amount to a new request, as recognised by the Prosecution itself.<sup>7</sup> As such, obtaining leave to respond to the Prosecution’s Submissions is not required, and the regulatory ten-day time limit provided in regulation 34 applies to the Defence.
8. According to rule 174(1) of the Rules of Procedure and Evidence (the “Rules”) and regulation 34 (b) of the Regulations of the Court, the Prosecution may file a response to a request for compensation within ten days. A variation of this time limit may be requested pursuant to regulation 35(2) of the Regulations of the Court if good cause is shown.<sup>8</sup> In its Submissions, the Prosecution requests approximately three additional months, until 15 December 2021, to file its response to the Request.<sup>9</sup> In support of its request for an extension of the time limit, the Prosecution indicates that more time is needed given “the scope and variety of issues raised, the long history of the case, and its extensive record”.<sup>10</sup>
9. The Prosecution’s request for an extension of time is patently unreasonable and lacks substantiation. Moreover, it falls short of meeting the good cause test, as applied in the *Bemba* compensation proceedings, and as established by the regulatory framework and

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<sup>5</sup> ICC-02/11-01/15-1414.

<sup>6</sup> ICC-02/11-01/15-1415.

<sup>7</sup> Prosecution Submissions, para. 5.

<sup>8</sup> *Prosecutor v. Bemba*, Order on the conduct of the proceedings related to “Mr Bemba’s claim for compensation and damages”, ICC-01/05-01/08-3675, 14 March 2019, para. 9.

<sup>9</sup> Prosecution Submissions, para. 2

<sup>10</sup> Prosecution Submissions, para. 2.

jurisprudence of this Court.<sup>11</sup> For the reasons further explained below, the Prosecution's request for an extension of time should be rejected.

10. *First*, the Prosecution's claim that an extension of time is warranted given that the Defence had "almost six months" to prepare the Request is inaccurate.<sup>12</sup> Although the Prosecution may not have been aware of it, shortly after the rendering of the Appeals Chamber Judgment rejecting the Prosecution's appeal, the Defence team's funding was cut. On 7 April 2021, the Registry granted a Defence request to temporarily retain two team members (lead counsel and one case manager), on an activity basis until 31 July 2021, in order to accomplish tasks relating to Mr Blé Goudé's return to Côte d'Ivoire, including holding discussions with the Registry and the Dutch Government relating to the modalities of his return. On 17 June 2021, the Defence requested an extension of the mandate of counsel and one case manager and filed a formal request to the Registry for additional funds, in order to prepare the compensation Request. On 22 June 2021, the Registry granted the Defence funds equivalent to the fee of one legal assistant, "allowing three former team members to be appointed for the purpose of assisting in the preparation of a compensation claim", as of 1 July 2021, until 30 September 2021, based on an hourly rate.<sup>13</sup>

11. Following the granting of additional funds, the Defence was able to commence its work on the compensation request in early July. The Defence therefore had two months to prepare the Request. Applying the Prosecution's logic that, out of fairness, the Prosecution should be allocated at least half the time to prepare its response, no more than a one-month extension may therefore be granted, should good cause be shown.<sup>14</sup> However, the amount of time held by a party or participant to prepare a filing before the Court is not, in and of itself, a factor which warrants the granting of an extension of time to another party or participant. The Prosecution has failed to show why a three-month extension is warranted in this particular case, especially given that it has been on notice of the Defence's intention of filing a compensation request from at least 15 July 2021 onwards.

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<sup>11</sup> *Prosecutor v. Bemba*, Order on the conduct of the proceedings related to "Mr Bemba's claim for compensation and damages", ICC-01/05-01/08-3675, 14 March 2019, para. 9.

<sup>12</sup> Prosecution Submissions, para. 11.

<sup>13</sup> Email from Counsel Support Section to the Defence, 22 June 2021, at 17:14.

<sup>14</sup> Prosecution's Submissions, para. 11.

12. *Second*, the issues raised by the Defence in its Request are not only straightforward but were entirely foreseeable by the Prosecution. The Prosecution was aware, and was put on notice of the severe deficiencies of its own case, at the *very least* from the moment the no case to answer proceedings were initiated, which highlighted the exceptional weakness of the Prosecution's case.<sup>15</sup> It is the Defence's submission that such deficiencies were known to the Prosecution from the initiation of the proceedings against Mr Blé Goudé, including its failure to investigate incriminating and exonerating circumstances equally, one of its core mandates provided for in the Rome Statute.<sup>16</sup> These deficiencies were formally confirmed and judicially recognised in great detail from the notification of the Trial Chamber I Majority's decision onwards, in January 2019, i.e. over two and a half years ago.<sup>17</sup> Thus, given the Prosecution has been aware of the exceptional weaknesses of its case and nonetheless pursued a zealous prosecution even at the appellate stage, arguments concerning the length of time covered by the Request, and the alleged complexity of the claim lack validity and do not justify an extension of time.<sup>18</sup> Moreover, an extension of approximately three months is disproportionate to the straightforward arguments raised in the Request by the Defence.

13. *Third*, the Prosecution's request amounts to unnecessarily and unreasonably prolonging the already extended proceedings against Mr Blé Goudé, [REDACTED], despite having been fully acquitted by the Appeals Chamber in March 2021. [REDACTED]. By requesting an extension of three months to file its written response, and that a potential hearing on the compensation Request be "held no earlier than February 2022", the Prosecution unreasonably seeks to delay the overall proceedings, which will significantly impact Mr Blé Goudé's fundamental rights and delay any finality in Mr Blé Goudé's acquittal before the Court.<sup>19</sup> This approach which would lead to significant delays, will also impact the calculation of damages claimed in the Request. It also undermines, rather than promotes, the Prosecution's asserted aim to "ensure efficient litigation".<sup>20</sup>

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<sup>15</sup> Request, paras 10-38.

<sup>16</sup> See Request, para. 11.

<sup>17</sup> See for example *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Opinion of Judge Cuno Tarfusser, 16 July 2019, ICC-02/11-01/15-1263-AnxA ('Opinion of Judge Tarfusser'), paras 2, 3 and 4; *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Reasons of Judge Geoffrey Henderson, 16 July 2019, ICC-02/11-01/15-1263-Conf-AnxB ('Reasons of Judge Henderson'), paras 1, 2, 5 and 9.

<sup>18</sup> Prosecution's Submissions, paras 9-10.

<sup>19</sup> Prosecution's Submissions, paras 3, 13.

<sup>20</sup> Prosecution Submissions, para. 4.

14. *Fourth*, the Prosecution’s argument that an extension of time is warranted in the event that Mr Gbagbo files a similar request for compensation pursuant to article 85, by claiming that an extension would allow the Prosecution to file a consolidated response, is patently unconvincing. The Prosecution’s argument is speculative, as it relies on a potential event which may or may not occur in the future. More significantly, the alleged “overlapping issues” which the Prosecution claims warrants the extension of time lacks foundation:<sup>21</sup> the nature of the Request for compensation is inherently personal. It is based on the unique damages and losses suffered by Mr Blé Goudé, stemming from his personal circumstances. In other words, compensation in this context is not to be regarded collectively or by comparison to the losses suffered by another. It depends on the personal circumstances of Mr Blé Goudé, by virtue of his wrongful prosecution and being the victim of a grave and manifest miscarriage of justice. Thus there are no overlapping issues which could justify an extension of time.

15. In conclusion, further delaying the compensation proceedings by granting the Prosecution an extension of time to file its response and prepare for the hearing would only aggravate the damages already suffered by Mr Blé Goudé and cause unnecessary and unreasonable delays to Mr Blé Goudé’s return to Côte d’Ivoire. The Prosecution’s request for an extension of time, and for a potential hearing to be held no earlier than February 2022 should be rejected.

*b. Defence’s motion to strike the LRV’s response from the case record*

16. In its response to Mr Blé Goudé’s request for a hearing pursuant to rule 174(2), the LRV did not oppose Mr Blé Goudé’s request for a hearing pursuant to rule 174(2), and supported the Prosecution’s request to file written submissions on the merits by 15 December 2021 and to hold the hearing no earlier than February 2022.<sup>22</sup>

17. In addition to the abovementioned, the LRV requested the Chamber to be granted the same deadline suggested by the Prosecution to convey the victims’ “views and concerns” on the Request and to “allow her sufficient time to undergo the necessary consultations with the concerned victims who reside in Côte d’Ivoire”.<sup>23</sup> The Defence submits that the LRV Response should be dismissed *in limine* as the victims have no standing in the proceedings

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<sup>21</sup> Prosecution Submissions, para. 2.

<sup>22</sup> LRV Response, para. 5.

<sup>23</sup> LRV Response, para. 6.

regarding Mr Blé Goudé’s request for compensation. Filing ICC-02/11-01/15-1415 should therefore be stricken from the case record.

18. *First*, pursuant to rule 174(1) “[a] request for compensation and any other written observation by the person filing the request shall be transmitted to the Prosecutor, who shall have an opportunity to respond in writing. Any observations by the Prosecutor shall be notified to the person filing the request”. The wording of rule 174(1) is clear as to the parties to be involved in the article 85 proceedings, i.e. the person filing the request and the Prosecution. This is also echoed in the Court’s jurisprudence on requests for compensation. In *Ngudjolo*, only the Prosecution filed its written observations to the request for compensation and during the hearing, only Counsel for Mr Ngudjolo and the Prosecution made oral submissions.<sup>24</sup> In *Bemba*, besides Counsel for Mr Bemba and the Prosecution, the Registry also made written submissions pursuant to an order by Pre-Trial Chamber II, whereas only Counsel for Mr Bemba and the Prosecution made oral submissions during the hearing.<sup>25</sup> The absence of any reference to participating victims in the article 85 proceedings both in law and in jurisprudence shows that victims have no standing in the proceedings at hand.

19. *Second*, the role of victims participating in the Court proceedings has been carefully limited and circumscribed in the statutory framework of the Court.<sup>26</sup> Significantly, victims are not

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<sup>24</sup> See *Prosecutor v. Mathieu Ngudjolo Chui*, Order instructing the Prosecution to file observations on the Request for Compensation, 18 August 2015, ICC-01/04-02/12-291-tENG, p. 4; *Prosecutor v. Mathieu Ngudjolo Chui*, Order on the conduct of the hearing of 23 November 2015, 30 October 2015, ICC-01/04-02/12-300-tENG, para. 1; *Prosecutor v. Mathieu Ngudjolo Chui*, Decision on the “Requête en indemnisation en application des dispositions de l’article 85(1) et (3) du Statut de Rome”, 16 December 2015, ICC-01/04-02/12-301-tENG, para. 11.

<sup>25</sup> See *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Mr Bemba’s claim for compensation and damages, 18 May 2020, ICC-01/05-01/08-3694, para8 and 13; *Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript of the 09 May 2019 hearing, ICC-01/05-01/08-T-376-ENG, p. 1, lns 22-25 to p. 3, lns 1-5.

<sup>26</sup> For instance, pursuant to rule 89(1) of the Rules, victims need to apply in writing to the Registrar in order to participate in the proceedings and such application may be rejected by the Chamber pursuant to rule 89(2). With respect to the framework in which victims can exercise their right to participate in the proceedings before the Court, victims, through their legal representatives, may attend and participate in the hearings before the Court pursuant to rule 91(2); make opening and closing statements in accordance with rule 89(1); present their views and concerns pursuant to Article 68(3) ICC Statute and rule 89; make representations in writing to a Pre-Trial Chamber in relation to a request for authorisation of an investigation pursuant to Article 15(3) ICC Statute and Rule 50(3) RPE; submit observations in the proceedings dealing with a challenge to the jurisdiction of the Court or the admissibility of a case in accordance with Article 19(3) ICC Statute; request a Chamber to order measures to protect their safety, psychological well-being, dignity and privacy in accordance with Article 68(1) ICC Statute and rule 87(1); and request a Chamber to order special measures in accordance with Article 68(1) ICC Statute and rule 88(1). See *Prosecutor v. Lubanga*, 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, para. 67.



“parties” to the criminal proceedings against an accused; they may only become “parties” at the reparations stage, which is independent from the participation stage, given that the possibility for victims to apply for reparations is not conditional upon previous participation in the proceedings, be it at the pre-trial or at the trial stage.<sup>27</sup> In the present case, however, the criminal case against Mr Blé Goudé, to which the victims have participated, has come to an end on 31 March 2021 when the Appeals Chamber rejected the Prosecution’s appeal against Trial Chamber I’s decision and confirmed Mr Blé Goudé’s acquittal.<sup>28</sup> Consequently, the victims’ participation rights ceased to exist at that point in the absence of a case against Mr Blé Goudé. Even though the criminal case against Mr Blé Goudé and the damages he has suffered because of it gave rise to the Request, the article 85 proceedings are a separate and independent stage where the victims have no participation rights.

20. *Third*, for the sake of argument, even if the article 85 Chamber were to allow the participation of victims in the compensation proceedings, the LRV failed to show how the victims’ “personal interests” pursuant to article 68 of the Rome Statute are affected in the case at hand in order to justify their participation. In her response to Mr Blé Goudé’s request for a hearing pursuant to rule 174(2), the LRV mentions that Mr Blé Goudé’s request for compensation is of importance for the victims who participated in the proceedings and it impacts their interests, and that they should therefore convey their “views and concerns”.<sup>29</sup> Nevertheless, the LRV has failed to present a concrete, express and convincing statement of fact to show how the victims’ interests are impacted by whether Mr Blé Goudé will be granted compensation for the damages he has suffered since the inception of the case against him due to a grave and manifest miscarriage of justice. Simply referring to the “great interest” of the people of Côte d’Ivoire and the victims who participated in the proceedings does not suffice to grant participant status to the LRV. The public’s interest in the case will be satisfied by the public hearing the Defence has requested.<sup>30</sup>

21. In addition, Mr Blé Goudé has indeed made reference in the Request to the victims in Côte d’Ivoire stating that he would like to use part of the damages if awarded to assist the victims

<sup>27</sup> *Prosecutor v. Ntaganda*, Decision Establishing Principles on the Victims’ Application Process, ICC-01/04-02/06-67, 28 May 2013, para. 13.

<sup>28</sup> ICC-02/11-01/15-1400.

<sup>29</sup> LRV Response, para. 6.

<sup>30</sup> ICC-02/11-01/15-1411-Red, para. 57.

of the 2010-2011 post-election violence in Côte d'Ivoire.<sup>31</sup> Nonetheless, that statement alone does not justify any standing to the victims; it simply reflects Mr Blé Goudé's commitment to actively contribute to the transitional process in Côte d'Ivoire, in order to allow the country and its people to reconcile and heal from their hurtful past.

22. For all of the above, the Defence requests the Chamber to dismiss *in limine* the LRV Response and to strike filing ICC-02/11-01/15-1415 from the case record, as the victims have no standing in the article 85 proceedings.

#### **IV. RELIEF SOUGHT**

23. In light of the above, the Defence respectfully requests the Chamber to

- a) **DENY** the Prosecution's request for a three-month extension of time to file its response to the Request;
- b) **DISMISS** *in limine* the LRV Response and strike filing ICC-02/11-01/15-1415 from the case record.

Respectfully submitted,



Mr Knoops, Lead Counsel

Dated this

22 September 2021,

At The Hague, the Netherlands

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<sup>31</sup> ICC-02/11-01/15-1411-Red, paras 2 and 56.