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No.: ICC-02/11-01/15  
Date: **17 September 2021**

**ARTICLE 85 CHAMBER**

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

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE**

**IN THE CASE OF**

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

**Public**

**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**

**Source: Office of the Prosecutor**

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

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## INTRODUCTION

1. On 31 March 2021, the Appeals Chamber, by majority, confirmed the acquittals of Mr Gbagbo and Mr Blé Goudé at the no case to answer stage.<sup>1</sup> Within six months of this judgment, both Mr Gbagbo and Mr Blé Goudé may, in principle, submit requests for compensation under article 85 of the Statute, for a designated Chamber to decide their merits.<sup>2</sup> On 9 September 2021, Mr Blé Goudé filed his request under article 85(3) of the Statute alleging a wrongful prosecution amounting to a grave and manifest miscarriage of justice.<sup>3</sup> He also requested a hearing under rule 174(2), RPE.<sup>4</sup> While Mr Gbagbo has yet to signal if he intends to file a claim for compensation, he has until 1 October 2021 to file his article 85 request, if he intends to do so.

2. On 14 September 2021, the Presidency designated this Chamber and referred the article 85 request to it.<sup>5</sup> The Prosecution has a right to respond in writing on the merits of article 85 requests.<sup>6</sup> Accordingly, it notifies the Chamber that it intends to exercise its right to respond and therefore, respectfully requests the Chamber to grant it sufficient time to meaningfully do so. Given the scope and variety of issues raised, the long history of the case, and its extensive record, the Prosecution respectfully requests the Chamber to file its response by 15 December 2021, which is both reasonable and necessary to allow the Prosecution to properly address the Request for which Mr Blé Goudé has had almost six months to prepare. In the event that Mr Gbagbo were also to file an article 85 request, the Prosecution considers that, given the breadth of the case and the likelihood of overlapping issues, filing a consolidated response to both article 85 requests would ensure the fair and expeditious conduct of this litigation. In that situation, the Prosecution anticipates at this stage that it would be able to file its consolidated response by 15 December 2021, should the Chamber grant it that time.

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<sup>1</sup> ICC-02/11-01/15-1400 A (“[NCTA AJ](#)”), received on 31 March 2021 and notified on 1 April 2021. Judge Ibáñez and Judge Bossa dissented.

<sup>2</sup> Rule 173(2), Rules of Procedure and Evidence (RPE).

<sup>3</sup> ICC-02/11-01/15-1411-Red (“[Article 85\(3\) Request](#)” or “[Request](#)”), para. 2.

<sup>4</sup> [Article 85\(3\) Request](#), para. 2.

<sup>5</sup> ICC-02/11-01/15-1413 (“[Presidency Referral Decision](#)”). See also ICC-02/11-01/15-1405 (“[Presidency Decision](#)”), paras. 1-3 (finding that the notice that Mr Blé Goudé had filed to designate a Chamber did not meet the requirements of a request for compensation under rule 173 and ordering Mr Blé Goudé to file a public version of the notice) and ICC-02/11-01/15-1407 (“[Reclassification Request](#)”) (where Mr Blé Goudé requested that ICC-02/11-01/15-1403-Conf-Exp-Corr “Notice” and ICC-02/11-01/15-1403-Conf-Exp-Corr-Anx1 “Notice Annex” be made public). The Prosecution does not have access to the Notice and Notice Annex.

<sup>6</sup> Rule 174, RPE: 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.

3. Further, the Prosecution notes Mr Blé Goudé’s request to schedule a hearing, and does not oppose it. It considers that the hearing—which must be held if the person seeking compensation requests one<sup>7</sup>—could appropriately be held after the written submissions in the litigation (including the Prosecution’s response and any replies thereto) have been filed.<sup>8</sup> The Prosecution would respectfully request that any hearing is held no earlier than February 2022 given the intervening winter recess and to allow parties adequate time to prepare following written submissions.

4. In the Prosecution’s respectful view, granting its procedural requests is not only necessary to ensure efficient litigation, but also fair in light of the issues at stake and the allegations made concerning the Prosecution’s conduct of the case, which it must be allowed to properly address.

5. Finally, in framing its current filing as a response to Mr Blé Goudé’s Request instead of a standalone procedural request, the Prosecution is guided by recent pronouncements by Pre-Trial Chamber I, of which Judge Alapini Gansou is part.<sup>9</sup> While the Prosecution, by way of this filing, is responding to Mr Blé Goudé’s Request for a hearing, it reserves its right to respond to the merits of the claim at a later stage. However, if the Chamber wishes to consider the scheduling aspects of the present filing as a standalone request such that Mr Blé Goudé may respond to them, the Prosecution defers to that decision.

### SUBMISSIONS

6. The Prosecution notifies the Chamber that it intends to respond to the merits of Mr Blé Goudé’s article 85 request. Moreover, in response to Mr Blé Goudé’s request for a hearing under rule 174(2), the Prosecution considers that such a hearing would be best scheduled after the conclusion of the written schedule of submissions, including those potentially by Mr Gbagbo.

7. The Prosecution further requests the Chamber to allow it sufficient additional time to meaningfully and comprehensively respond to the article 85 Request in writing.

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<sup>7</sup> Rule 174(2), RPE.

<sup>8</sup> [Article 85\(3\) Request](#), paras. 2, 57-58 (requesting a hearing, without specifying a timetable).

<sup>9</sup> See ICC-02/18-13 (“[Venezuela I Order](#)”), paras. 29-30 (“[...] Filing new requests in response to a specific motion has the undesired effect of opening parallel litigation, with each request inviting a response and, potentially, a request for leave to file a reply. *The Chamber does not consider that the filing of requests in response to a specific motion is conducive to the efficient administration of justice and requests the Prosecution to discontinue this practice.*”) emphasis added.

*i. Request to be permitted to file a response by 15 December 2021*

8. In line with earlier compensation proceedings at this Court, the Prosecution respectfully requests sufficient time to review the Request and underlying record so it can properly respond in a fair and comprehensive manner. Different compensation chambers have allotted the Prosecution time to respond depending on the circumstances of the case: none, however, have confined the Prosecution to the regular 10-day response period in regulation 34(b) of the RoC, so as to safeguard the Prosecutor's statutory right to respond in writing to article 85 claims and in the interests of fairness.<sup>10</sup> These interests of fairness exist in this case as well, warranting the Prosecution being given until 15 December 2021 to do so. While it is unclear if regulation 34(b) of the RoC applies to compensation proceedings, should the Chamber consider that to be the case, the Prosecution submits that the reasons below constitute good cause to extend the time limit to 15 December 2021.

9. *First*, while Mr Blé Goudé's Article 85 Request may appear modest for its 25 pages, the scope and gravity of the claims that he advances require proper and thorough consideration of the extensive record. In his Request, Mr Blé Goudé raises a number of claims alleging purported improper conduct by the Prosecution. He claims that the Prosecution "utterly failed to live up to its mandate in [its] investigation or prosecution", that it did not exercise "due diligence" and that such lack of due diligence was "a recurring phenomenon" throughout the proceedings.<sup>11</sup> He further argues that the Prosecution "acted in direct contravention of its mandate under Article 54(1)(a)"<sup>12</sup> and that the Prosecution's narrative of the situation was "one-sided".<sup>13</sup> He also argues that the Prosecution "cherry picked" exhibits to suit its narrative.<sup>14</sup> Mr Blé Goudé also raises several evidentiary issues relating to the authenticity of documents and that both documentary and testimonial evidence amounted to anonymous hearsay.<sup>15</sup> Further, Mr Blé Goudé argues in the alternative that even if his detention and prosecution could be justified, the Prosecution failed to "re-evaluate its case" at the relevant times.<sup>16</sup> Addressing these arguments requires a close review of the extensive record of the

<sup>10</sup> ICC-01/04-02/12-291-tENG ("[Ngudjolo Order](#)"), pp. 3-4 (not applying regulation 34(b) of the RoC); ICC-01/05-01/08-3675 ("[Bemba Time Extension Decision](#)"), para. 9 (finding that the specificities of the claim and the necessity of a time limit to ensure the fairness of the proceedings constitute good cause to afford additional time to the Prosecutor to file her response).

<sup>11</sup> [Article 85\(3\) Request](#), paras. 11-12.

<sup>12</sup> [Article 85\(3\) Request](#), para. 12.

<sup>13</sup> [Article 85\(3\) Request](#), para. 15.

<sup>14</sup> [Article 85\(3\) Request](#), para. 16.

<sup>15</sup> [Article 85\(3\) Request](#), para. 14.

<sup>16</sup> [Article 85\(3\) Request](#), para. 30.

*Gbagbo & Blé Goudé* case. The Trial Chamber’s decision to acquit Mr Gbagbo and Mr Blé Goudé after the conclusion of the Prosecution’s case (consisting of two Separate Opinions) amounts to over 1000 pages (with a Dissenting Opinion of over 300 pages), and the Appeals Judgment to over 500 pages.<sup>17</sup> The trial proceedings lasted for over three years, with over 200 transcripts and over 4600 exhibits. Several key filings that Mr Blé Goudé refers to such as the mid-trial brief and the NCTA submissions run into several thousands of pages.<sup>18</sup>

10. *Second*, the allegations also span a period of 7 years, from the time of Mr Blé Goudé’s surrender to the Court on 22 March 2014 until the present date, and potentially continuing beyond.<sup>19</sup> Of note, Mr Blé Goudé alleges a range of different claims attaching to different phases of the proceedings, from the investigation and his arrest until the appeal,<sup>20</sup> arguing a lack of prosecutorial diligence “from the inception of the case up and through the appeal”.<sup>21</sup> Each set of these arguments relates to a different phase of the case (investigation, arrest, pre-trial, trial, appeal and post-appeal) and their respective record will need to be reviewed and answered separately. Moreover, the Request marks three distinct periods for the calculation of compensation.<sup>22</sup>

11. *Third*, while Mr Blé Goudé has had almost six months to study the record and prepare his Request, it would be fair and reasonable to give the Prosecution at least half that time (three months, until 15 December 2021) to respond to these allegations. This would be consistent with the timeframes set by other compensation chambers, safeguarding the Prosecutor’s right to respond on similar, if not equal, footing with the claim.<sup>23</sup> Moreover, in *Bemba*, the compensation Chamber also took into account when the Prosecution had become aware of the arguments in the claim (even if in summary form), in allotting time.<sup>24</sup> Unlike *Bemba* where the Prosecution had notice of some of the summary arguments of the claim four months before the

<sup>17</sup> The NCTA Judgment (ICC-02/11-01/15-1263, with various annexes) amounts to 1373 pages. The Appeals Judgment (ICC-02/11-01/15-1400, with various annexes) amounts to 550 pages.

<sup>18</sup> The mid-trial brief (ICC-02/11-01/15-1136 with annexes) amounts to 550 pages. The Prosecution NCTA submissions (ICC-02/11-01/15-1207) amounts to 1095 pages, the Defence NCTA submissions (ICC-02/11-01/15-1199-Corr, with annexes and ICC-02/11-01/15-1198-Corr with annexes) amount to 563 and 323 respectively, and the victims’ submissions (ICC-02/11-01/15-1206) amounts to 101 pages.

<sup>19</sup> [Article 85\(3\) Request](#), paras. 47-55, fn. 68 (reserving a right to file an amendment to the Request, to reflect the additional days spent until his safe transfer).

<sup>20</sup> [Article 85\(3\) Request](#), paras. 11-18, 19-30.

<sup>21</sup> [Article 85\(3\) Request](#), para. 11.

<sup>22</sup> [Article 85\(3\) Request](#), paras. 46-55.

<sup>23</sup> [Bemba Time Extension Decision](#), paras. 7-10 (granting the Prosecution at least 8 weeks for its response); [Ngudjolo Order](#), pp. 3-4 (granting the Prosecution at least 5 weeks for its response).

<sup>24</sup> [Bemba Time Extension Decision](#), para. 9.

actual claim was filed,<sup>25</sup> in this instance, Mr Blé Goudé filed his notice in relation to compensation to the Presidency on 23 June 2021 *ex parte*, requesting that the Presidency maintain confidentiality vis-à-vis the Prosecution.<sup>26</sup> Although the Prosecution was made aware—via the 15 July 2021 Presidency Decision—that Mr Blé Goudé intended to file a compensation request, it was only through the Request filed on 9 September 2021 that the Prosecution was notified of the grounds or arguments in relation to the claim.

12. Accordingly, the Prosecution respectfully requests the Chamber to permit it to file a response (or consolidated response, should Mr Gbagbo also file an article 85 request) by 15 December 2021. If Mr Gbagbo files a request, the Prosecution will assess the claim and may approach the Chamber with a request for additional pages (beyond the 30 pages provided by regulation 38(3)(f) of the RoC to respond to an individual request) and additional time, if necessary.

### CONCLUSION

13. For all the reasons above, the Prosecution does not oppose Mr Blé Goudé’s request for a hearing, but respectfully requests that any such hearing is held after all written submissions have been filed (including the Prosecution’s response and any reply thereto), and no earlier than February 2022 given the intervening winter recess and to allow parties adequate time to prepare following written submissions. Further, the Prosecution respectfully requests the Chamber to grant it sufficient time until 15 December 2021 to respond in writing to the merits of Mr Blé Goudé’s article 85 Request.




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Karim A A Khan QC, Prosecutor

Dated this 17<sup>th</sup> day of September 2021

At The Hague, The Netherlands

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<sup>25</sup> [Bemba Time Extension Decision](#), para. 9 (noting that “some of the related arguments were already known by the Prosecutor since the 13 November 2018 Decision”).

<sup>26</sup> [Presidency Decision](#), paras. 2-3.