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**International
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TRIAL CHAMBER I

Before: Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson
Judge Bertram Schmitt

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

**Prosecution's consolidated response to the Defence requests for leave to appeal the
Decision on the Joinder of Charges**

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. The Trial Chamber has joined the cases against the Accused, Laurent Gbagbo (“Gbagbo”) and Charles Blé Goudé (“Blé Goudé”).¹ Both cases concern “acts of violence by pro-Gbagbo forces [...] committed against the civilian population at the same locations and during the same time periods”.² The alleged conduct of the two accused persons, participating in and contributing to these crimes, is “closely linked”.³

2. The Chamber held that, as a matter of law, article 64(4) of the Rome Statute (“Statute”) and rule 136 of the Rules of Procedure and Evidence (“Rules”) do not limit joinder of charges to situations where the charges are identical.⁴ In deciding that joinder is appropriate, the Trial Chamber determined that separate trials were not required to avoid “serious prejudice” to the rights of the Accused or otherwise to protect the interests of justice.⁵ In its management and supervision of the joined trial, the Trial Chamber stressed that it shall continue to “accord the same rights to each accused as if they were being tried separately”, consistent with rule 136(2) of the Rules.⁶

3. Laurent Gbagbo and Charles Blé Goudé now seek leave to appeal the Decision.⁷ However, none of the issues for which they propose certification meets the requirements of article 82(1)(d) of the Statute.

¹ ICC-02/11-01/15-1 (“Decision”), para.68.

² Decision, para.54. *See also* paras.53-54 (noting that, of the five incidents for which criminal responsibility is alleged, four are common to the cases against both Laurent Gbagbo and Charles Blé Goudé).

³ Decision, para.56. The Trial Chamber noted that, although the “alleged participation in and/or contribution” of the two accused persons “to the conception and implementation of the common plan or purpose is not the same”, they were both alleged “to have been part of an ‘inner circle’ which jointly designed and implemented a common plan with the purpose of maintaining Mr Gbagbo as President by all means, including through the use of armed force against civilians”. This common plan or purpose “was an essential element founding charges” against them both, with respect to all the modes of liability charged. *See* Decision, paras.55-56.

⁴ Decision, para.46.

⁵ *See* Decision, paras.51, 58-67.

⁶ Decision, para.68.

⁷ *See* ICC-02/11-01/15-6 (“Gbagbo’s Motion”); ICC-02/11-01/15-5 (“Blé Goudé’s Motion”) (together, “Motions”).

Submissions

4. The Motions should be dismissed. Of the ten issues proposed for appeal (“Ten Issues”),⁸ only two—which substantially overlap in subject-matter—arguably constitute “appealable” issues within the meaning of the jurisprudence of this Court.⁹ Moreover, none of the Ten Issues in any event significantly affects the fair and expeditious conduct of the proceedings, or the outcome of the trial. Further, immediate resolution by the Appeals Chamber of any of the Ten Issues would not materially advance the proceedings.

Only two of the Ten Issues, amount to ‘appealable’ issues arising from the Decision

5. Gbagbo’s Second Issue raises the matter whether article 64(5) of the Statute and rule 136 foresee two distinct procedures on joinder, and whether the Trial Chamber has the power to join charges that are not identical.¹⁰ Similarly, Blé Goudé’s First Issue concerns the question whether the Trial Chamber erred in its application of article 64(5) in conjunction with rule 136, despite recalling that the alleged participation of the Accused in the common plan was not the same.¹¹

6. These two issues appear to raise the issue of whether a Trial Chamber has the power to join the cases of two or more accused when they do not face identical charges, and as such may raise an identifiable subject or topic that was essential for the Trial Chamber’s determination of the matter of joinder of charges before it. As such they arguably amount to appealable issues under article 82(1)(d). In addition, they also arise from the Decision.¹² However, as argued below,¹³ neither these two

⁸ See Gbagbo’s Motion, paras.11-17 (“Gbagbo’s First Issue”), 18-26 (“Gbagbo’s Second Issue”), 27-31 (“Gbagbo’s Third Issue”), 32-34 (“Gbagbo’s Fourth Issue”), 35-40 (“Gbagbo’s Fifth Issue”), 41-47 (“Gbagbo’s Sixth Issue”); Blé Goudé’s Motion, paras.13-18 (“Blé Goudé’s First Issue”), 19-22 (“Blé Goudé’s Second Issue”), 23-30 (“Blé Goudé’s Third Issue”), 31-32 (“Blé Goudé’s Fourth Issue”).

⁹ See Gbagbo’s Motion, paras.18-26 (“Gbagbo’s Second Issue”); Blé Goudé’s Motion, paras.13-18 (“Blé Goudé’s First Issue”),

¹⁰ Gbagbo’s Motion, paras.18-26.

¹¹ Blé Goudé’s Motion, paras.13-18.

¹² See in particular, Decision, paras.42-51.

¹³ See paras.22-29 below.

issues, nor any of the other eight issues raised in the Motions meet the criteria for leave to appeal.

Eight of the Ten Issues are not ‘appealable’ issues arising from the Decision

7. The remaining eight Issues do not amount to “appealable” issues arising from the Decision. None of them constitutes “an identifiable subject or topic requiring a decision for its resolution”.¹⁴ Nor is any of them “essential for the determination of matters arising in the judicial cause under examination”.¹⁵

Gbagbo’s First Issue

8. Gbagbo’s First Issue—namely, whether the Defence was given an appropriate opportunity to be heard¹⁶—merely raises a disagreement with the Trial Chamber’s management of the proceedings leading up to the Decision. Gbagbo complains in particular that he was denied an opportunity to file a sur-reply. Yet, although an “appealable” issue may address legal, factual, or “mixed” matters,¹⁷ it is not a vehicle to address procedural determinations incidental to the substance of the impugned decision. Gbagbo fails to demonstrate that the lack of a sur-reply amounts to an issue that was “essential”, or even relevant, to the Decision.¹⁸ He fails to address the Trial Chamber’s express statement that it would not consider any part of the Prosecution’s reply which exceeded matters upon which Gbagbo had already made submissions.¹⁹

Gbagbo’s Third Issue

9. Gbagbo’s Third Issue—whether the Trial Chamber committed an error of law by relying on irrelevant factors²⁰—likewise constitutes a mere disagreement with the

¹⁴ ICC-01/04-168 OA3, para.9.

¹⁵ ICC-01/04-168 OA3, para.9.

¹⁶ Gbagbo’s Motion, paras.11-17.

¹⁷ ICC-01/04-168 OA3, para.9. *See also* ICC-02/04-01/05-367, para.22; ICC-02/05-02/09-267, p.6; ICC-01/04-01/06-2463, para.8; ICC-01/09-02/11-27, para.7; ICC-01/04-01/06-1433 OA11 (Dissenting Opinion of Judge Song), para.4 (specifying that “[a] decision ‘involves’ an issue if the question of law or fact constituting the issue was essential for the determination or ruling that was made”).

¹⁸ *Contra* Gbagbo’s Motion, paras.11-17.

¹⁹ Decision, paras.36, 38. *See also* para.37.

²⁰ Gbagbo’s Motion, paras.27-31.

analysis in the Decision. Gbagbo incorrectly states that the Decision failed to explain the relevance of the notions of “same transaction” and “common plan”, or of a decision in the *Katanga* case.²¹ Yet, and to the contrary, the Trial Chamber made clear its view that both the authority cited and the concept of “same transaction” were relevant to the exercise of its discretion under article 64(5) of the Statute to join charges “even when those charges are not identical”,²² as they assisted the Chamber in assessing “whether a connection” nevertheless “exists” between the charges.²³ Gbagbo’s disagreement with this approach does not sustain his claim that the Trial Chamber was ambiguous or vague in its analysis.²⁴

10. Furthermore, contrary to Gbagbo’s contention,²⁵ the Trial Chamber did not rely on the “common plan” as a criterion for joinder. Instead, as part of its analysis on the “similarity of charges, it merely noted, among other factors, that “Laurent Gbagbo and Charles Blé Goudé are both alleged to have been part of an ‘inner circle’ which jointly designed and implemented a common plan [...]”.²⁶ The merits of legal theories pertaining to the notion of a “common plan” remain, however, irrelevant to the Chamber’s interpretation and application of the law on joinder.

Gbagbo’s Fourth Issue

11. Gbagbo’s Fourth Issue—whether the Trial Chamber conducted a comparison of the charges of the two Accused²⁷—amounts, again, to no more than a disagreement with the manner in which the Trial Chamber conducted its extensive analysis,²⁸ and its ultimate conclusions. Such a “disagreement or conflicting opinion [over] a matter

²¹ Gbagbo’s Motion, para.27.

²² Decision, para.48.

²³ Decision, para.49. In this context, the Trial Chamber not only relied on a decision in the *Katanga* case but also took into account relevant authorities from other tribunals including the ICTY, ICTR, and SCSL.

²⁴ See Gbagbo’s Motion, paras.28-29.

²⁵ Gbagbo’s Motion, para.30.

²⁶ Decision, para.55. See also para.56.

²⁷ Gbagbo’s Motion, paras.32-34.

²⁸ See Decision, paras.52-57 (consideration of the charges).

arising in the judicial cause under examination” falls short of meeting the threshold required under article 82(1)(d).²⁹

Gbagbo’s Fifth Issue

12. Gbagbo’s Fifth Issue—whether the Trial Chamber erred in law by not considering the consequences that the joinder would have on the content of the charges³⁰—mistakes the effect of the Decision. As a result, Gbagbo’s Fifth Issue does not arise from the Decision. Since the Decision does not alter the content of the charges, it could not therefore have any impact on them. At this stage of the proceedings, the content of the charges may only be amended pursuant to the procedure prescribed in article 61(7) of the Statute. For the same reasons, there is likewise no foundation in the Decision for Gbagbo’s claim that the Accused will need to defend themselves against charges that were not specifically confirmed against them.³¹

Gbagbo’s Sixth Issue

13. Gbagbo’s Sixth Issue—whether the Trial Chamber erred by not considering the practical consequences that the joinder would have on the conduct of the proceedings and the rights of the Accused³²—does not correctly present the Decision. To the contrary, consistent with rule 136(1), the Chamber extensively considered whether joinder would cause “serious prejudice to the accused”³³ and whether joinder would be in the “interests of justice”.³⁴ In so doing, the Chamber addressed all the arguments regarding the fairness of the proceedings and the protection of the rights of the Accused raised by the Defence.³⁵ Mere disagreement with this analysis and its outcome is insufficient to raise an appealable issue.

²⁹ ICC-01/04-168 OA3, paras.9-10.

³⁰ Gbagbo’s Motion, paras.35-40.

³¹ Gbagbo’s Motion, para.38.

³² Gbagbo’s Motion, paras.41-47.

³³ Decision, paras.58-62.

³⁴ Decision, paras.63-67.

³⁵ ICC-02/11-01/11-765.

Blé Goudé's Second Issue

14. Blé Goudé's Second Issue³⁶ does not arise from the Decision because it is based on a misunderstanding of the Trial Chamber's reasoning, or a mere disagreement with it.

15. Contrary to the assertion in Blé Goudé's Motion, the Trial Chamber specifically "addressed the fundamental issue of need for adequate time to prepare for trial" in two respects.³⁷ Nothing in the Decision suggests that the Trial Chamber contemplated depriving the Defence "of its right to adequate time".³⁸ First, it correctly directed itself to the law—unchallenged by Blé Goudé—that in principle, in appropriate circumstances, "the proper administration of justice may be best served by joinder, even if it risks some delay or adds some degree of complexity in the proceedings."³⁹ Second, it stated that "the question of the time needed for adequate trial preparation [...] is a matter of trial management to be determined by the Chamber at the appropriate time in the proceedings."⁴⁰ Blé Goudé's disagreement with the *manner* in which the Trial Chamber thus resolved the issue does not mean that it was unaddressed in the Decision.

16. The approach in the Decision is, in any event, entirely consistent with the law. Rule 136(2), to which the Trial Chamber later expressly referred, guarantees to Blé Goudé the same rights as if he were being tried separately. The specific modalities by which the Trial Chamber will assure those rights formed no part of the Decision, which only required the Trial Chamber to be satisfied that those rights would not necessarily be seriously prejudiced as a result of the joinder.⁴¹ The recognition of

³⁶ Blé Goudé's Motion, p.8 (sub-title, "Whether the Chamber misapplied Rule 136 [...] when determining that the joinder's possible detrimental consequences to the Defence's fundamental right to adequate time was a matter of trial management, and not a matter of serious prejudice to the Accused").

³⁷ *Contra* Blé Goudé's Motion, para.22.

³⁸ *Contra* Blé Goudé's Motion, para.20.

³⁹ Decision, para.61.

⁴⁰ Decision, para.61.

⁴¹ See Decision, paras.44-45, 51, 58-62. See also e.g. STL, *Prosecutor v. Ayyash et al*, STL-11-01/T/TC, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014 ("Ayyash Decision"), paras.52-54 (reasoning that joinder was desirable "as long as the appropriate measures are taken to ensure

issues pertaining to preparation time as a matter of trial management in no way amounts to a “reduc[tion]” of their significance or a misapplication of article 67(1)(b) of the Statute.⁴² Accordingly, Blé Goudé’s alleged need for additional preparation time is immaterial to the Decision and should, if necessary, be litigated separately.⁴³

Blé Goudé’s Third Issue

17. Blé Goudé’s Third Issue⁴⁴ is no more than a disagreement with the Trial Chamber’s reasoning, showing no “identifiable subject or topic which requires a decision for its resolution”, much less one that is “essential” to the Decision.⁴⁵

18. Not only was the similarity of the evidence in the cases against Gbagbo and Blé Goudé but one factor which the Trial Chamber considered to favour joinder,⁴⁶ it was also acknowledged that the evidence would not be identical.⁴⁷ Notwithstanding the Trial Chamber’s remark that Defence submissions concerning differences in the evidence were “unsubstantiated by further detail”, the Decision thus does not assume identity of evidence.

19. In its reasoning, the Trial Chamber noted the Prosecution’s assertion that “largely the same evidence has been and will be disclosed in both cases”, and relied upon at trial, but also that “largely the same evidence was relied upon by the Prosecution at the confirmation hearing” of each case.⁴⁸ Blé Goudé merely disagrees with the Trial Chamber’s conclusion, drawing obscure and unexplained distinctions between the “global bundle of evidence” to assert that only “part of it is related to the *Gbagbo* case

fairness”, and ordering joinder “on the basis that the Trial Chamber would take—and will continue to take, as necessary, all the measures required to ensure a fair trial”).

⁴² *Contra* Blé Goudé’s Motion, para.20.

⁴³ *See* Blé Goudé’s Motion, para.21.

⁴⁴ Blé Goudé’s Motion, p.9 (sub-title, “Whether the Chamber misapplied Rule 136 when relying on the Prosecution’s unsubstantiated submissions that the evidence in the two cases is largely the same and, therefore, a joint trial would serve the interests of justice by avoiding the duplication of a large portion of the evidence”).

⁴⁵ *See* ICC-01/04-168 OA3, para.9.

⁴⁶ Decision, para.64. *See also* paras.63, 65-67.

⁴⁷ Decision, paras.60 (noting the possibility of “the presentation of evidence relevant to only one Accused” and stressing that “joinder, by its very nature, contemplates such ‘attendant inevitable minimum prejudices’”), 66 (noting that “the evidence will be largely the same”).

⁴⁸ Decision, para.64.

while the other part is related to the *Blé Goudé* case.”⁴⁹ His “doubts” about the size of the case and the evidence given by potential future witnesses likewise do not assist him.⁵⁰ This disagreement, and the attempt to cloak it as a “standard of proof” issue,⁵¹ does not disclose an appealable issue.

20. In any event, the Trial Chamber further noted that, as a bench of professional judges, it was capable of distinguishing the evidentiary basis of the cases against each accused person and of excluding from their consideration extraneous factors such as any prejudicial evidence.⁵²

Blé Goudé’s Fourth Issue

21. Blé Goudé’s Fourth Issue⁵³ misrepresents the Decision, and hence discloses no genuine issue at all. Although the Decision properly recognised and gave some weight to the interests of victims⁵⁴—as required by the Statute⁵⁵—nothing in the Trial Chamber’s reasoning substantiates Blé Goudé’s claims that his fair trial rights were “negated” or that victims’ rights were given “preference” to his rights.⁵⁶ Indeed, article 68(1) of the Statute, cited expressly by the Trial Chamber, provides that the interests of victims are subject to “the rights of the accused and a fair and impartial trial”.⁵⁷ Furthermore, the matters of judicial economy impugned by Blé Goudé⁵⁸ are

⁴⁹ Blé Goudé’s Motion, para.25. *See also* para.26 (referring to “an artificial combination of separated evidence”).

⁵⁰ *Contra* Blé Goudé’s Motion, para.27.

⁵¹ Blé Goudé’s Motion, para.28.

⁵² Decision, para.60.

⁵³ Blé Goudé’s Motion, pp.11-12 (sub-title, “Whether the Trial Chamber erred by holding in para 65 that a joint trial would expose witnesses twice to ‘hardship’ and would contravene the interests of the victims and whether the Trial Chamber erred by holding in para 66 that reasons of Judicial economy (a joint trial would result in more court hours and resources and a duplication of efforts by the court’s organs) would outweigh the benefits of a separate trial [sic]”). The Prosecution considers that the references to “a joint trial” in this context should be understood as references to “separate trials”.

⁵⁴ Decision, para.65 (“it is evident that requiring witnesses to testify twice could pose hardship to witnesses, as well as increase the risk of exposure of protected witnesses. For all these reasons, the Chamber considers a joint trial to be in the interests of witnesses and victims and in accordance with the Chamber’s obligations under Article 68(1) of the Statute”).

⁵⁵ *See* Statute, art.68(1). *Contra* Blé Goudé’s Motion, para.31 (asserting that the Trial Chamber emphasised “without proper motivation” the interests, *inter alia*, of victims). *But see* para.32 (conceding that victims “have a standing in the Court”).

⁵⁶ *Contra* Blé Goudé’s Motion, paras.31-32.

⁵⁷ Statute, art.68(1).

⁵⁸ *See* Blé Goudé’s Motion, para.32 (criticising Decision, paras.65-66).

in at least some respects associated with the interests of the Defence, which has a right *inter alia* to an expeditious trial.⁵⁹ In any event, as previously noted, the Decision also demonstrated the Trial Chamber's intention that matters of trial management ensuring the fairness of the joined proceedings were separate from the matter of joinder itself, and would be addressed at the appropriate time.⁶⁰

The Ten Issues do not significantly affect the fair and expeditious conduct of the proceedings, or the outcome of the trial

22. Defence Counsel fail in any event to show that the Ten Issues would significantly affect the fair and expeditious conduct of the proceedings, or the outcome of the trial, as required by article 82(1)(d) of the Statute.

23. The general acknowledgement by the Single Judge of the "potential impact" of joinder upon the "conduct of proceedings and the rights of the accused" does not excuse Gbagbo or Blé Goudé from showing that the Ten Issues they present *specifically* meet the requirements of article 82(1)(d).⁶¹ Likewise, it is insufficient simply to imply that a purported error of law necessarily significantly affects the fair and expeditious conduct of the proceedings since this would render the specific criteria of article 82(1)(d) otiose. Gbagbo's desultory efforts to show that the issues he proposes for appeal meet the requirements of article 82(1)(d) are insufficient.⁶² Blé Goudé's arguments must likewise fail,⁶³ as the following paragraphs show.

24. The Decision as such has no detrimental impact on the fair and expeditious conduct of the proceedings or the rights of the Accused. The question of joinder of charges is separate from matters relating to the supervision, management, and conduct of joined proceedings. In fact, as recognised in the Decision, rule 136(2) provides that once charges have been joined "each accused shall be accorded the

⁵⁹ See Statute, art.67(1)(c).

⁶⁰ See e.g. Decision, paras.61, 68. See also above para.16.

⁶¹ See Gbagbo's Motion, para.48 (citing ICC-02/11-01/11-744, para.10).

⁶² See Gbagbo's Motion, paras.48-50.

⁶³ *Contra* Blé Goudé's Motion, paras.34-41.

same rights as if such accused were being tried separately”. Future decisions by the Trial Chamber in that regard may themselves be subject to interlocutory appeal, if necessary, without disclosing any issue warranting interlocutory appeal, much less showing an error, in the original joinder decision itself. This is consistent with a recent decision of the Trial Chamber of the Special Tribunal for Lebanon, which distinguished between its decision on joinder, the subsequent duty of the chamber to ensure the fairness of the proceedings and the protection of the rights of all accused in the joined trial.⁶⁴

25. Blé Goudé argues that the issues “all significantly impair the Defence’s right to adequate time and facilities”.⁶⁵ Yet, as noted above, this is a mistaken premise.⁶⁶ The Decision clearly separates the question of joinder (and any serious prejudice *inherent* to joinder in this case) from the question of future trial management, which includes assuring for both Accused adequate time and facilities. By virtue of its control over the proceedings, the Trial Chamber is fully able to ensure these rights to the Accused in their joint trial. The remedy for Blé Goudé’s speculative concern that “the Defence will find itself pressed for resources and time to prepare an adequate defence” does not lie in an interlocutory appeal against the decision on joinder, but rather in an appropriately justified application for relief (such as adjustment of the pre-trial schedule) to the Trial Chamber, if necessary.⁶⁷ Accordingly, the proposed issues cannot significantly affect the fair and expeditious conduct of the proceedings as claimed.

26. Blé Goudé’s further claim that certification for appeal will allow him “to contest the Chamber’s finding of appropriateness of joinder despite both accused’s vastly different alleged participation [...] in the common plan” merely reiterates his subjective view—which the Trial Chamber has already heard, and rejected—but fails

⁶⁴ See Statute, art.64(2); Rules, rule 136(2). See further *Ayyash Decision*, paras.52-54, 92.

⁶⁵ Blé Goudé’s Motion, para.35.

⁶⁶ See e.g. *above* paras.16, 24.

⁶⁷ *Contra* Blé Goudé’s Motion, para.38.

to show the necessary impact on the conduct of proceedings.⁶⁸ Nor does his apparently limited view of the evidence which might be “material” for the purpose of rule 77 show that the proposed issues significantly affect the fair and expeditious conduct of the proceedings.

27. In particular, neither Gbagbo’s Second Issue nor Blé Goudé’s First Issue significantly affects the fair and expeditious conduct of the proceedings. As the Trial Chamber stressed, joinder of the cases does not entail an amendment of the charges against the Accused, and professional judges are fully capable of excluding extraneous evidence from their consideration.⁶⁹ Furthermore, as previously described, not every alleged legal error automatically affects the fair conduct of the proceedings.⁷⁰ Thus, even if article 64(5) and rule 136 were misapplied to charges that are not identical, the fairness of the proceedings in this instance will still depend upon the manner in which the Trial Chamber will subsequently conduct the trial pursuant to article 64(2). In that regard, the Decision makes clear that it will continue to ensure that both Gbagbo and Blé Goudé continue to receive all their rights to a fair trial, in full equality.⁷¹

28. Neither Gbagbo nor Blé Goudé fully develops any argument showing that the Ten Issues significantly affect the outcome of the trial. Gbagbo refers only to the Trial Chamber’s own observation concerning the risk of inconsistent treatment and assessment of evidence in separate trials, but fails to demonstrate how the issues have any impact upon the outcome of the trial.⁷² Blé Goudé merely argues that his Second and Fourth Issues would significantly affect the outcome of the trial, based on his contention that they prejudice his right to adequate time to prepare for trial.⁷³ Yet his assertion that “simple trial management” cannot remedy such matters is

⁶⁸ *Contra* Blé Goudé’s Motion, para.39.

⁶⁹ *Contra* Blé Goudé’s Motion, para.18. *See* Decision, paras.57, 60.

⁷⁰ *See above* paras.23-24.

⁷¹ *See above* para.16.

⁷² *See* Gbagbo’s Motion, para.50 (citing Decision, para.65).

⁷³ Blé Goudé’s Motion, para.41.

contrary both to logic and the procedures of this Court. Again, as the Decision makes clear, to the extent necessary, the Trial Chamber will undertake the necessary measures, so that the rights of the Accused are not adversely affected by the joinder of the cases and that there is no detrimental effect upon the outcome of the trial.

Immediate resolution of any of the Ten Issues would not materially advance the proceedings

29. The Motions fail to demonstrate that immediate resolution by the Appeals Chamber of any of the Ten Issues would materially advance the proceedings. To the contrary, insofar as the joinder of these two cases may raise trial management issues relevant to the fair trial rights of the Accused, the Trial Chamber has made clear its intention to protect those rights as proceedings continue.⁷⁴ Accordingly, intervention by the Appeals Chamber at this stage is unnecessary. Likewise, claims that joining the cases will lead to contamination of information between them, and consequently cause “irreparable damage”, are speculative and unsubstantiated.⁷⁵

30. Blé Goudé’s claim that immediate appellate intervention is required on the “novel issue” of joinder in the interests of “future cases” is also misconceived.⁷⁶ Since he fails to show that the issues presented require immediate resolution in *this* case,⁷⁷ the mere provision of guidance for other cases does not meet the requirement of article 82(1)(d). Should appealable issues arise in future cases, they will be addressed appropriately at that time. Consistent with this view, the Appeals Chamber has stressed that the purpose of interlocutory appeals is not to provide advisory opinions or merely declaratory relief.⁷⁸

⁷⁴ *Contra* Gbagbo’s Motion, para.52; Blé Goudé’s Motion, para.44.

⁷⁵ *Contra* Blé Goudé’s Motion, para.45.

⁷⁶ *Contra* Blé Goudé’s Motion, para.46. *See also* Gbagbo’s Motion, para.53.

⁷⁷ *See* Blé Goudé’s Motion, para.46 (“the issues require an immediate resolution not only to advance the proceedings in [this case], but also in future cases”).

⁷⁸ *See e.g.* ICC-01/04-503 OA4 OA5 OA6, para.30 (“If the Appeals Chamber were to answer such a request, it would have to assume the role of an advisory body, which it considers to be beyond and outside the scope of its authority”).

Conclusion

31. For the reasons above, the Motions should be dismissed.



Fatou Bensouda, Prosecutor

Dated this 23rd day of March 2015

At The Hague, The Netherlands