



Original: **English**

No.: ICC-02/11-01/11
Date: **19 February 2015**

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Cuno Tarfusser
Judge Olga Herrera-Carbuccia

SITUATION IN THE REPUBLIC OF COTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

Public Document

**Response of the Common Legal Representative of victims to the "Prosecution
application for leave to reply to Defence response ICC-02/11-01/11-765"
(ICC-02/11-01/11-771)**

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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I. PROCEDURAL BACKGROUND

1. On 12 June 2014, Pre-Trial Chamber I, by majority, issued a decision confirming the charges against Mr. Gbagbo under article 61(7)(a) of the Rome Statute and committed him for trial.¹

2. On 17 September 2014, the Presidency reconstituted Trial Chamber I (the “Chamber”) and referred the case of *The Prosecutor v. Laurent Gbagbo* to it for trial.²

3. 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*”).³

4. On 16 December 2014, the Prosecutor filed a request to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* (the “Prosecution’s Request for Joinder”).⁴

5. On 6 January 2015, the Chamber set the deadline for any response to the Prosecution’s Request for Joinder within 21 days of the notification of the French translation of said request and of the *Blé Goudé Confirmation Decision*.⁵

¹ See the “Decision on the confirmation of charges against Laurent Gbagbo” (Pre-Trial Chamber I), No. ICC-02/11-01/11-656-Red, 12 June 2014, p. 131.

² See the “Decision re-constituting Trial Chamber I and referring to it the case of *The Prosecutor v. Laurent Gbagbo*” (Presidency), No. ICC-02/11-01/11-682, 17 September 2014.

³ 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 (the “*Blé Goudé Confirmation Decision*”).

⁴ See the “Prosecution’s Request to join the cases of *The Prosecutor v. Laurent GBAGBO* and *The Prosecutor v. Charles BLE GOUDÉ*”, No. ICC-02/11-01/11-738, 16 December 2014 (the “Prosecution’s Request for Joinder”).

⁵ See 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, Single Judge), No. ICC-02/11-01/11-744, 6 January 2015.

6. On 6 January 2015, the Principal Counsel of the Office of Public Counsel for Victims, acting as Common Legal Representative of the victims authorised to participate in the case (the “Common Legal Representative”),⁶ filed a response supporting the Prosecution’s Request for Joinder.⁷

7. On 12 February 2015, the Defence filed a response opposing the Prosecution’s Request for Joinder (the “Defence’s Response”).⁸

8. On 17 February 2015, the Prosecution filed an application for leave to reply to the Defence’s Response (the “Prosecution’s Request”).⁹ On the same date, the Single Judge clarified that any response to the Prosecution’s Request should be filed by 19 February 2015.¹⁰

9. Pursuant to regulation 24(2) of the Regulations of the Court, the Common Legal Representative submits a response to the Prosecution’s Request.

II. RESPONSE OF THE COMMON LEGAL REPRESENTATIVE

10. The Common Legal Representative supports the Prosecution’s Request because it is in the interests of the victims authorized to participate in the proceedings that the legal framework for the joinder of cases before the Court and its application to case at hand be clearly ascertained by the Chamber. The Common

⁶ See the “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-138, 4 June 2012, pp. 25-26; and the “Second decision on victims’ participation at the confirmation of charges hearing and in the related proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-384, 6 February 2013, pp. 22-23.

⁷ See the “Consolidated Response of the Common Legal Representative of victims to the Prosecution’s request to join the *Gbagbo* and *Blé Goudé* cases (ICC-02/11-01/11-738) and to the subsequent Defence’s request (ICC-02/11-01/11-742)”, No. ICC-02/11-01/11-743, 6 January 2015.

⁸ See the “Réponse de la Défense à la « Demande de jonction des affaires *Le Procureur c. Laurent Gbagbo* et *Le Procureur c. Charles Blé Goudé* » (ICC-02/11-01/11-738-tFRA) déposée par l’Accusation.”, No. ICC-02/11-01/11-765, 12 February 2015 (the “Defence’s Response”).

⁹ See the “Prosecution application for leave to reply to Defence response ICC-02/11-01/11-765”, No. ICC-02/11-01/11-771, 17 February 2015 (the “Prosecution’s Request”).

¹⁰ See email from the Single Judge on 17 February at 17h25.

Legal Representative is of the view that further submissions by the Prosecution are necessary for this purpose, for the reasons outlined in the Prosecution's Request and for the additional reasons detailed below. In short, the Common Legal Representative asks the Chamber to consider the interests of victims when exercising its discretion pursuant to regulation 24(5) of the Regulations of the Court and to grant the Prosecution's Request.

11. As already submitted to the Chamber, the victims authorised to participate in these proceedings have a personal interest in seeing the cases against Mr. Gbagbo and against Mr. Blé Goudé tried together. Granting the Prosecution's Request for Joinder would facilitate the expeditiousness of the proceedings, increase the victims' safety during said proceedings and contribute to ascertaining the truth of the violent events detailed in the confirmation decisions in both cases, in particular the extent of the victimisation and harm suffered by the victims during the post-electoral crisis in Côte d'Ivoire.¹¹

12. Against this background, the Common Legal Representative contends that the victims authorised to participate in the proceedings have an obvious interest in the Prosecution having the chance to provide a reply to the Defence's Response. This is consistent with the practice of the Chambers to take into consideration the importance and potential effect on the ongoing proceedings of the issues for which leave to reply is sought.¹²

13. In particular, the distinction made in the Defence's Response between the "joinder of charges" ordered by a Trial Chamber pursuant to article 64(5) of the Rome Statute and the "joint trials" held by a Trial Chamber under rule 136 of the Rules of Procedure and Evidence merits a reply by the Prosecution. Indeed, the

¹¹ See the "Consolidated Response of the Common Legal Representative of victims to the Prosecution's request to join the *Gbagbo* and *Blé Goudé* cases (ICC-02/11-01/11-738) and to the subsequent Defence's request (ICC-02/11-01/11-742)", *supra* note 7, para. 15.

¹² See for instance the "Decision on the Prosecution's request for leave to reply to the 'Defence Response to Prosecution's Request for the Review of Potentially Privileged Material'" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/10-61, 24 February 2011, p. 4.

Chamber may render a decision contrary to the interests of the victims if said distinction, raised for the first time before the Court in the Defence's Response and not entirely clear,¹³ is not properly discussed before the Chamber.

14. Moreover, as argued in the Prosecution's Request,¹⁴ the Common Legal Representative contends that the interpretation of the applicable legal framework is bound to have a decisive impact on the Prosecutor's Request for Joinder and on the joinder of future cases.

15. In this regard, the Common Legal Representative notes that the strict approach to article 64(5) and rule 136 proposed in the Defence's Response would make the joinder of any case very unlikely.¹⁵ According to the Defence, pursuant to these provisions "[l]es charges ne peuvent être jointes si ces faits [des faits sous-tendant les charges et des faits sous-tendant les modes de responsabilité] ne sont pas les mêmes pour les deux accusés".¹⁶ Applying this understanding to the case against the Accused, the Defence claims that "*les charges ne sont pas les mêmes et que les deux décisions de confirmation des charges [contre M Gbagbo et M Blé Goudé] ne recouvrent ni exactement les mêmes faits, ni les mêmes modes de responsabilité*".¹⁷

16. It is submitted that the Prosecution, as the party proffering charges against Mr. Gbagbo,¹⁸ should be afforded the opportunity to provide its views on the correctness of this approach to article 64(5) and rule 136 and its alleged failure to follow it in the case at hand,¹⁹ also in the interests of the victims authorised to participate in this case.

¹³ See the Defence's Response, *supra* note 8, paras. 22-39. The Common Legal Representative notes that the Defence appears to understand article 64(5) and rule 136 as requiring *similarity* in the charges, but eventually conditions any joinder to the charges being *identical*. Cf. *ibid.*, paras. 9, 54 and 78 with paras. 29, 35, 68 and 73.

¹⁴ See the Prosecution's Request, *supra* note 9, para. 5.

¹⁵ See the Defence's Response, *supra* note 8, paras. 40-93.

¹⁶ *Idem*, para. 78. See also *ibid.*, paras. 35 and 82.

¹⁷ *Ibid.*, para. 63. See also *ibid.*, paras. 65-66, 72, 74, 77, 79, 86 and 88-89.

¹⁸ *Ibid.*, paras. 60 and 72.

¹⁹ *Ibid.*, paras. 41, 47, 64, 72 and 86.

17. Finally, if the Prosecution is granted leave to reply to the Defence's Response, the Common Legal Representative respectfully requests the Chamber to consider granting her also the opportunity to reply to the Defence's Response.

18. In the *Bemba* and *Kenyatta* cases, legal representatives of victims were granted authorisation to file replies to responses concerning observations made by the legal representatives and to responses addressing new issues of law and fact on which the Chambers could benefit from receiving further observations.²⁰ The Common Legal Representative submits that the issues raised in the Defence's Response identified in paragraphs 13 to 16 above, as well as the ones identified in the Prosecution's Request,²¹ fulfil these conditions.

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Trial Chamber to grant the Prosecution's Request and, if so, to consider granting the Common Legal Representative leave to reply to the Defence's Request.



Paolina Massidda
Principal Counsel

Dated this 19th day of February 2015

At The Hague, The Netherlands

²⁰ See the "Decision (i) ruling on legal representatives' applications to question Witness 33 and (ii) setting a schedule for the filing of submissions in relation to future applications to question witnesses" (Trial Chamber III), No. ICC-01/05-01/08-1729, 12 September 2011, para. 14; and the "Decision on request of the Legal Representative of Victims for leave to reply" (Trial Chamber V(B)), No. ICC-01/09-02/11-979, 26 November 2014, para. 6.

²¹ See the Prosecution's Request, *supra* note 9, paras. 2 and 4.