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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

**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)**

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 4 June 2012, the Single Judge of Pre-Trial Chamber I (the “Single Judge”) authorized 139 victims to participate at the confirmation of charges hearing and in the related proceedings of the *Gbagbo* case, and appointed a counsel from the Office of Public Counsel for Victims (the “OPCV” or the “Office”) as the Common Legal Representative of said victims (the “Common Legal Representative”).¹

2. On 6 February 2013, the Single Judge authorized 60 victims to participate at the confirmation of charges hearing and in the related proceedings of the *Gbagbo* case, and confirmed the appointment of a counsel from the Office as Common Legal Representative of all the victims admitted to participate in the proceedings.²

3. On 1 June 2014, the Single Judge authorized the 199 victims already participating in the *Gbagbo* case to also participate at the confirmation of charges hearing and in the related proceedings in the *Blé Goudé* case, appointed a counsel from the Office as Common Legal Representative of said victims, and specified the manner of their participation in the proceedings.³

4. 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 (the “*Gbagbo* Confirmation Decision”).⁴

¹ 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.

² See 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.

³ 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.

⁴ 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 (the “*Gbagbo* Confirmation Decision”).

5. On 1 August 2014, the Single Judge authorized further 271 victims to participate at the confirmation of charges hearing and in the related proceedings in the *Blé Goudé* case, confirmed the appointment of a counsel from the Office as Common Legal Representative of said victims, and specified the manner of their participation in the proceedings.⁵

6. 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.⁶

7. 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”).⁷

8. On 16 December 2014, the Prosecutor filed in the record of the *Gbagbo* proceedings a request to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* (the “Prosecution’s Request”).⁸

9. On 20 December 2014, the Presidency referred the case of *The Prosecutor v. Charles Blé Goudé* to the Chamber for trial.⁹

10. On 22 December 2014, the Prosecutor filed in the record of the *Blé Goudé* proceedings a request to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé*.¹⁰

⁵ See 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.

⁶ 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.

⁷ 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”).

⁸ 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”).

⁹ 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).

¹⁰ 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.

11. On 22 December 2014, the Defence of Mr. Gbagbo filed the “1. *Requête afin que la Chambre de première instance I se déclare incompétente pour statuer sur la demande de jonction des affaires Gbagbo et Blé Goudé présentée par la Procureur* (ICC-02/11-01-11-738) 2. *Dans l’hypothèse où la Chambre se déclarerait compétente, requête portant sur la détermination de la date à partir de laquelle courent les délais fixés par que la Défense puisse déposer une éventuelle réponse à la demande de jonction du Procureur*” (the “Defence’s Request”).¹¹

12. On 23 December 2014, the Registrar transmitted the full record of the proceedings related to the *Blé Goudé* case to the Chamber.¹²

13. On 5 January 2015, the Chamber partially granted the Defence’s Request, setting the deadline for any response to the Prosecution’s Request within 21 days of the notification of the French translation of the Prosecution’s Request and the *Blé Goudé* Confirmation Decision.¹³

14. Pursuant to regulation 24(1) of the Regulations of the Court, the Principal Counsel of the OPCV, acting as Common Legal Representative of the victims in the *Gbagbo* and *Blé Goudé* cases,¹⁴ submits a consolidated response to the Prosecution’s Request and to part of the Defence’s Request.

¹¹ See the “1. *Requête afin que la Chambre de première instance I se déclare incompétente pour statuer sur la demande de jonction des affaires Gbagbo et Blé Goudé présentée par la Procureur* (ICC-02/11-01/11-738) 2. *Dans l’hypothèse où la Chambre se déclarerait compétente, requête portant sur la détermination de la date à partir de laquelle courent les délais fixés par que la Défense puisse déposer une éventuelle réponse à la demande de jonction du Procureur*”, No. ICC-02/11-01/11-742, 22 December 2014 (dated 19 December 2014) (the “Defence’s Request”).

¹² See the “Transmission to Trial Chamber I of the Full Record of the Proceedings, including the Decision on the Confirmation of Charges”, No. ICC-02/11-02/11-195, 23 December 2014.

¹³ See email from Trial Chamber I received on 5 January 2015 at 10h59.

¹⁴ See *supra* notes 1, 2, 3 and 5.

II. CONSOLIDATED RESPONSE

1. The victims support the Prosecution's Request for the joinder of the cases

15. The Common Legal Representative supports the Prosecution's Request for the joinder of the two cases because a joint trial of Mr. Gbagbo and Mr. Blé Goudé will facilitate the expeditiousness of the proceedings, will increase the victims' safety during said proceedings and will contribute to ascertaining the truth of the violent events detailed in the confirmation decisions in both cases without affecting the rights of the defence. Indeed, the victims authorized to participate in the *Gbagbo* and *Blé Goudé* cases are of the view that said joinder is essential to their personal interest in the expeditiousness of the proceedings and share concerns that their appearance before the Court in successive proceedings may increase the existing risks to their security. The victims have also indicated that the joinder of the cases will allow a better understanding of the events which took place during the post-electoral crisis in Côte d'Ivoire, and in particular the extent of the victimisation and harms they suffered from.

16. The Common Legal Representative shares the arguments put forward by the Prosecution in its Request in relation to the fact that the cases are essentially the same,¹⁵ and that the joinder will avoid duplication of the presentation of evidence and promotes judicial economy.¹⁶

17. Apart for the clear wording of rule 136 of the Rules of Procedure and Evidence which provides that persons accused jointly "*shall be tried together*", in the present situation a number of reasons justify a joinder at this stage of the proceedings. A joinder will enhance the fairness as well as the judicial economy of the proceedings. A joinder will minimise the potential impact on witnesses and better facilitate their

¹⁵ See the Prosecution's Request, *supra* note 8, paras. 10-16.

¹⁶ *Idem*, paras. 18-19.

protection. A joinder will ensure that the same issues arising in both cases are dealt with consistently. A joinder will avoid the unnecessary expenses and time that the Court would face if it held two separate trials.¹⁷

18. Finally, the Common Legal Representative notes that the Prosecution's Request has been filed at the early stage of preparation for trial in both cases, allowing for a proper and timely discussion of all preliminary matters so as to avoid undue delays in the proceedings.

2. The victims find no merit in the Defence's Request for the dismissal *in limine* of the Prosecution's Request

19. The Common Legal Representative contends that the Defence's Request fails to take notice of relevant procedural developments which render moot its arguments against the Prosecution's Request. In this regard, the Common Legal Representative points out that the *Blé Goudé* case was referred to the Chamber for trial on 20 December 2014.¹⁸ Therefore, the Common Legal Representative disagrees with the contention of the Defence that the Prosecution's Request must be dismissed *in limine* as inadmissible.¹⁹

20. Firstly, the Defence argues that the Chamber is not competent to decide on the Prosecution's Request because (i) the Chamber cannot rule on a request referring to a decision which is not firm yet, such as the *Blé Goudé* Confirmation Decision,²⁰ and (ii) the Chamber has not been appointed yet as the Chamber to adjudicate on the *Blé Goudé* case and has still not been transmitted the proceedings of said case.²¹ In reference to both contentions, the Common Legal Representative notes that since the filing of the Defence's Request, the *Blé Goudé* Confirmation Decision has become

¹⁷ See the "Decision on the joinder of the Cases against Germain KATANGA and Mathieu NGUDJOLO CHUI" (Pre-Trial Chamber II), No. ICC-01/04-01/07-257, 10 March 2008, page 8.

¹⁸ See *supra* note 9.

¹⁹ See the Defence's Request, *supra* note 11, para. 28.

²⁰ *Idem*, paras. 20, 26.

²¹ *Ibid.*, paras. 23, 26, 30.

firm, the Chamber has been appointed in said case and the relevant proceedings have been transmitted to it.²² Consequently, these arguments by the Defence have become moot.

21. Secondly, the Defence argues that a decision on the Prosecution's Request should be made by "*une autre formation de la Cour*", identified as the Presidency,²³ given the lack of applicable precedents before the Court and the need to ensure the protection of Mr. Blé Goudé's rights.²⁴ In this regard, the Common Legal Representative notes that, pursuant to the Rome Statute,²⁵ the Presidency is not responsible for taking decisions of a non-administrative nature which are expressly attributed to the Chambers, such as the joinder and separation of trials.²⁶

22. The Presidency itself has already had the occasion to reach this conclusion regarding a request of a different nature made by the Defence after the charges were confirmed in this case and the proceedings had been transferred to the Chamber.²⁷ Indeed, the Presidency found that "[i]t was incumbent on the Defence [of Mr. Gbagbo] to make any challenge against the Judge: (i) before the Chamber, (ii) within the Application for Leave to Appeal submitted to the Chamber or (iii) before the Presidency prior to the conclusion of the pre-trial proceedings before the Chamber".²⁸ Since the proceedings before the Pre-Trial Chamber have already been concluded in this case,²⁹ the Trial Chamber is the only body of the Court competent to rule on the Prosecution's Request.

23. In this regard, the Common Legal Representative underlines the precedent according to which "*the only power which the Trial Chamber has during this stage* [the

²² See *supra* notes 9 and 12.

²³ See the Defence's Request, *supra* note 11, paras. 29 and 32.

²⁴ *Idem*, paras. 29 and 31.

²⁵ See Rome Statute, article 38(3).

²⁶ See Rome Statute, article 64(5) and Rules of Procedure and Evidence, rule 136.

²⁷ See the "Decision on the Application of the Defence for Mr. Gbagbo of 23 September 2014 (ICC-02/11-01/11-685)" (Presidency), No. ICC-02/11-01/11-690, 7 October 2014.

²⁸ *Idem*, para. 27 (emphasis added).

²⁹ See the "Decision on the Defence request for leave to appeal the 'Decision on the Confirmation of Charges against Laurent Gbagbo'" (Pre-Trial Chamber I), No. ICC-02/11-01/11-680, 11 September 2014, para. 53.

stage before the trial has begun], *which does not involve altering the wording or the substance of the charges in any way, is to rule on any application for joinder or severance of the charges against more than one accused*".³⁰

24. Lastly, regarding the Defence's argument on the protection of Mr. Blé Goudé's rights,³¹ the Common Legal Representative notes that the Prosecution has filed in said case a request almost identical to the one she has filed in the present case.³² Consequently, Mr. Blé Goudé has the opportunity to defend his rights as he finds it appropriate.

25. Moreover, the Common Legal Representative, while being cognisant of the Chamber's decision to grant the part of Defence's Request regarding the extension of the deadline to respond to the Prosecution's Request,³³ wishes to address one argument of the Defence related to the joinder itself.

26. The Defence argues that the *Blé Goudé* Confirmation Decision may have an impact on the manner in which the charges confirmed against Mr. Gbagbo in the *Gbagbo* Confirmation Decision are understood,³⁴ or even that the *Blé Goudé* Confirmation Decision is "*un acte d'accusation complémentaire contre Laurent Gbagbo*".³⁵ In this regard, the Common Legal Representative notes that, regardless of the content of the charges confirmed against Mr. Blé Goudé, the charges confirmed against Mr. Gbagbo remain the same since 12 June 2014, *i.e.* the charges as contained in the *Gbagbo* Confirmation Decision.

³⁰ See the "Decision on the status before the Trial Chamber of the evidence heard by the Pre-Trial Chamber and the decisions of the Pre-Trial Chamber in trial proceedings, and the manner in which evidence shall be submitted" (Trial Chamber I), No. ICC-01/04-01/06-1084, 13 December 2007, para. 41.

³¹ See the Defence's Request, *supra* note 11, para. 31.

³² See *supra* note 10.

³³ See *supra* note 13.

³⁴ See the Defence's Request, *supra* note 11, para. 34.

³⁵ *Idem*, para. 35.

27. Contrary to the Defence's arguments, the charges confirmed against Mr. Blé Goudé will not bring about "*une sorte « d'uniformisation » des charges* [contre Laurent Gbagbo] *en cas de jonction*".³⁶ The Prosecution's Request is not a request to amend the charges against Mr. Gbagbo,³⁷ but a request for the confirmed charges against Mr. Gbagbo to be heard and adjudicated upon during the same trial as the charges confirmed against Mr. Blé Goudé.

28. Finally, the Common Legal Representative contends that the joinder of the cases at this early stage of the proceedings before the Chamber would not prejudice the Accused and would not be contrary to the interests of justice.

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Trial Chamber to grant the Prosecution's Request and order the joinder of the *Gbagbo* and *Blé Goudé* cases.



Paolina Massidda
Principal Counsel

Dated this 6th day of January 2015

At The Hague, The Netherlands

³⁶ *Ibid.*, para. 55.

³⁷ See Rome Statute, article 61(9).