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**International
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TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Cuno Tarfusser
Judge Olga Herrera Carbuccion

SITUATION IN COTE D'IVOIRE

IN THE CASE OF
THE PROSECUTOR v. CHARLES BLE GOUDE

Public Document

**DEFENCE RESPONSE TO THE "PROSECUTOR'S REQUEST TO JOIN THE
CASES OF *THE PROSECUTOR V. LAURENT GBAGBO* AND THE
PROSECUTOR V. CHARLES BLÉ GOUDÉ"**

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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Introduction

1. On 22 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 joinder request’).¹
2. On 12 February 2015, the Defence team for Mr. Laurent Gbagbo filed a response to the joinder request by which it primarily and alternatively requested Trial Chamber I to reject the joinder request.²
3. On 17 February 2015, the Prosecutor filed an application for leave to reply.³
4. The Defence of Mr. Charles Blé Goudé respectfully submits to the Trial Chamber I (‘the Chamber’) its response to the Prosecution’s request to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé*. The Defence respectfully urges the Trial Chamber to reject the request for the following two reasons. First, the Prosecution misstates the law pertaining to joinder and fails to substantiate how the cases are the same. In fact, the charges confirmed against the two respective accused differ significantly, and thereby the request for joinder should be denied (I). Second, *assuming arguendo* the extensive similarities between the cases, under Rule 136(1) of the Rules of Procedure and Evidence (‘the R.P.E.’) separate trials are necessary in order to avoid serious prejudice to both the accused (II).

¹ ICC-02/11-02/11-194.

² ICC-02/11-01/11-765.

³ ICC-02/11-01/11-771.

Preliminary Observations

5. The Defence of Mr. Blé Goudé intends to raise the rudimentary character of the joinder request. It appears that the Prosecutor does not demonstrate the necessity and the opportunity of the joinder of cases, nor does she take into account the interests of justice and the serious prejudice that the joinder would cause to the accused.
6. Although the Prosecutor's request contains over seven pages of reasoning, the legal basis on which the Prosecutor intends to found her request has never been explained. Nor does she provide any argumentation on the charges. Actually, the Prosecutor limits her request to an accumulation of statements without a proper legal foundation.
7. In particular, the alleged identity of charges has not been justified by, at the very least, an enunciation of these charges.
8. Besides, it has not been demonstrated that the joinder of the cases would serve the interests of justice.
9. In this regard, it is difficult for the Defence to develop a response to the joinder request as long as this joinder request only contains general statements, while not being supported by sound legal and factual arguments reasoning.
10. The obligation to state reasons is a general principle of law⁴ which orders that the proceedings are supported by pleas of fact and law.
11. Instead of such an argumentation, the Prosecutor asks the Chamber to record a major change in the procedural framework of the two cases for the only reason that this change would benefit to the Office of the Prosecutor's task in both cases.

⁴ As a general principle of law, it shall be applied before the International Criminal Court, pursuant to Article 21 of the Statute.

12. For instance, it is unusual to find the following concern in the Prosecutor's request: *"It is also in the interests of justice that the Prosecution not "lose" the cooperation of witnesses due to consecutive or simultaneous trials"*.⁵
13. The Defence may understand the difficulty of dealing with numerous testimonies, especially in cases for which the Prosecutor intends to call more than one hundred witnesses for each trial.⁶ Nevertheless, it is not in the very essence of the joinder, in accordance with Article 64(5) of the Rome Statute ('the Statute') and Rule 136 of the R.P.E., to facilitate the cause of the Prosecution.
14. The legal criteria to take into account when deciding upon a joinder or a severance are stated in Rule 136 of the R.P.E. The material consideration that the joinder would make it easier for one side to call witnesses should not be decisive, the more so as the difficulty entailed for the other party is not considered.
15. The Defence of Mr. Blé Goudé respectfully submits that the cases against Charles Blé Goudé and Laurent Gbagbo should not be joined for the following two reasons: the Prosecution misstates the law as the charges against the accused differ significantly (I) and, in the event the Chamber finds the charges are sufficiently similar to join the cases, Mr. Blé Goudé would suffer serious prejudice, and therefore the Prosecution's motion should be denied (II).

⁵ ICC-02/11-02/11-194, para. 17.

⁶ ICC-02/11-02/11-T-9-CONF-ENG, p. 39, lines 3-8.

I. A misstatement of Rule 136 of the R.P.E.

i.) An inexistent “presumption of joinder of cases”

16. In accordance with Article 64(5) of the Statute:

“Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused.”

17. This provision explicitly empowers the Trial Chamber to join or to sever the charges against several accused. It is completed by Rule 136 of the R.P.E. according to which:

“1. Persons accused jointly shall be tried together unless the Trial Chamber, on its own motion or at the request of the Prosecutor or the defence, orders that separate trials are necessary, in order to avoid serious prejudice to the accused, to protect the interests of justice or because a person jointly accused has made an admission of guilt and can be proceeded against in accordance with article 65, paragraph 2.”

18. The only criteria to take into account when deciding upon a joinder or a severance request are those explicitly exposed in Rule 136, that is to say “*to avoid serious prejudice to the accused, to protect the interests of justice or because a person jointly accused has made an admission of guilt [...]*”.

19. These criteria may seem to be simple but they require proving whether or not they are met in the present situation. However, not only the Prosecutor fails to analyse these criteria of opportunity for a joinder but also he fails to demonstrate that the legal requirements for a joinder have been met.

20. Indeed, Rule 136 assigns a legal framework for the joinder and severance of cases. It precisely states that:

“Persons accused jointly shall be tried together [...]”.

21. To paraphrase it, to be tried together, persons shall first be accused jointly. It is thus clear that the concept of joinder of cases covers, in reality, two joinders: a

joinder of charges, which is an essential prerequisite for a **joinder of trials**. In other words, Rule 136(1) clearly establishes a scheme of joinder according to which only persons charged jointly can be tried together. The French version of the R.P.E. specifically and precisely refers to this scheme of joinder stating:

“1. Les accusés **dont les charges ont été jointes** sont jugés ensemble [...]”(emphasis added).

22. This issue is of the utmost importance regarding the fact that it is a novelty, as agreed by the Prosecution in its request, before the International Criminal Court. Yet, any misinterpretation of the primary applicable law could have dramatic consequences for the rights of the accused.
23. In the instant case, the Prosecutor filed a joinder request based on the incorrect assumption that Rule 136 would contain a presumption of joinder of cases.⁷
24. Following the Prosecutor’s statement would be equal to considering that the Trial Chamber is obliged to join the cases of jointly accused individuals whereas the letter and the spirit of Rule 136(1) state the contrary.
25. A presumption of joinder of cases entails that the minimum latitude would be left to the Trial Chamber. Indeed, it would order that trials of jointly accused persons would be joined almost automatically whereas Rule 136 provides it is only when the Chamber reckons that a joinder would serve the interests of justice and would not cause a serious prejudice to the accused that the trials can be joined.
26. Hence, in light of the foregoing, Rule 136 should not be interpreted as including a presumption of joinder, as asserted by the Prosecution. The joinder alone is a proceeding which can be initiated by the Prosecutor or the Defence but which is directed, in any case, by the Chamber referring to

⁷ ICC-02/11-02/11-194, para. 7.

specific legal criteria: the interests of justice and the absence of serious prejudice to the accused.

ii.) A misstatement of the notion of “charges”

27. As previously said,⁸ a joinder of charges is an essential prerequisite to a joinder of trials. To this extent, the fact that several individuals are accused by the Prosecutor in the course of the same events shall not be sufficient to join the charges as such an analysis would appear to be irrelevant in light of the Statute and the R.P.E.

28. Indeed, the terminology used by Article 64(5) of the Statute and Rule 136 of the R.P.E. leaves no doubt about what is at stake when dealing with the issue of charges.

29. In his joinder request, the Prosecutor argues that “[t]he cases against Mr Gbagbo and Mr Blé Goudé are essentially one and the same”,⁹ “the Prosecution’s alleged facts and circumstances against both Accused are identical”¹⁰ and “the charged crimes in both cases were committed in the course of the same factual transaction”.¹¹

30. By doing so, the Prosecutor misstates the notion of charges pursuant to Article 64(5) of the Statute.

31. Indeed, it appears from Article 64(5) of the Statute and Rule 136 of the Rules that only the Trial Chamber is entitled to join or to sever charges and trials. This power granted by the primary applicable law to the Trial Chamber is consistent with the rhythm of the proceedings.

32. A joinder of charges can only happen when the charges are known, that is to say after they have been confirmed by a Pre Trial Chamber.

⁸ See para. 21.

⁹ ICC-02/11-02/11-194, para. 10.

¹⁰ ICC-02/11-02/11-194, para. 11.

¹¹ ICC-02/11-02/11-194, para. 15.

33. As such, and contrary to what the Prosecutor states in the joinder request, the charges are not the alleged crimes as mentioned in the arrest warrant or even in the Document Containing the Charges. The charges against the accused are the ones specifically mentioned in the Decision on the Confirmation of Charges.
34. Following the Prosecutor's reasoning on this specific issue of charges would equal ignoring the preliminary stage of the case and the procedural framework decided by the Pre Trial Chamber during the confirmation of charges.
35. If, there can be a doubt on the content of charges before such a confirmation, any doubt disappears with the Decision on the Confirmation of Charges as this decision settles the framework and the content of the charges.
36. Therefore, from the moment the decision is delivered, it is impossible to refer to the charges according to the Prosecutor. The only remaining charges are the ones confirmed by the Pre Trial Chamber.

iii.) A joinder request based on different charges

37. As precisely explained in the response filed by the Defence team of Mr. Gbagbo,¹² the charges are a complex notion composed of three elements, that is to say, pursuant to Regulation 52 of the Regulations of the Court and the position of Pre Trial Chamber II in the *Bemba* case:¹³ 1) the facts, 2) the legal characterisation of these facts and 3) a specific liability mode.
38. Thus, a charge is not an accusation arbitrarily decided by the Prosecutor, but a legal concept delimited by the judges.

¹² ICC-02/11-01/11-765, para. 49-54.

¹³ ICC-01/05-01/08-388, para. 28.

39. In the present cases, Decisions on Confirmation of Charges have been delivered by Pre Trial Chamber I respectively for Mr. Gbagbo and Mr. Blé Goudé. Close reading of these decisions justify the conclusion that the charges in both cases are neither identical, nor similar.
40. The Defence submits a table summarising the charges confirmed against Mr. Blé Goudé and Mr. Gbagbo referenced as Annex 1 to the present response. The differences are emphasized with bold letters.
41. As shown by the above mentioned table, not only the events are not exactly the same, but also and especially, the liability modes stipulated by the judges are different, which leads to the conclusion that the charges are not identical.
42. The fact that the alleged crimes for which the accused are tried before the Court happened during the same alleged events or in a so called “*same transaction*” is irrelevant since it refers to a specific provision of the Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia¹⁴ which has no equivalent in the Rules of the Court.

¹⁴ Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, Rule 48 Joinder of Accused: “*Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried.*”

II. Assuming *arguendo* the extensive similarity between the two cases, the Defence requests the Chamber to order separate trials in order to avoid serious prejudice to the Accused.

i.) By rejecting the Prosecution's Joinder Request, the Chamber would prevent serious prejudice to the Accused by ensuring that Mr. Blé Goudé has adequate time to prepare his defence

43. Under Rule 136(1) of the R.P.E., persons accused jointly will not be tried together when the Trial Chamber finds that separate trials are necessary in order to "*avoid serious prejudice to the accused.*" The word "serious" suggests that the prejudice suffered in the context of joinder would have to violate a fundamental right of the accused such that his right to a fair trial could no longer be ensured. The Rules are silent as to the definition of serious prejudice. However, interpreting the term in light of Article 67 of the Rome Statute sheds light on its meaning.

44. While not mentioning serious prejudice to the accused, Article 67 does enumerate the minimal guarantees to which each accused must be entitled. Notably, the second guarantee mentioned is "*the right of the defence to have adequate time and facilities to prepare the defence.*" To date, the issue of serious prejudice under Rule 136 has only occurred in two cases, and in both instances, the Court decided to eventually sever the charges in order to avoid serious prejudice to the accused. In both cases, the serious prejudice resulted from a violation of one of the rights listed in Article 67.

45. In *The Prosecutor v. Katanga and Ngudjolo*,¹⁵ and most recently in *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen*,¹⁶ the Court found

¹⁵ "Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused person," ICC-01/04-01/07-3319.

¹⁶ "Decision Severing the Case Against Dominic Ongwen," ICC-02/04-01/05-424.

that severance was necessary in order to ensure the accused's fundamental right to be tried with undue delay under Article 67(1)(c).¹⁷ In *Katanga and Ngudjolo*, the Court determined, in light of the modification of the legal characterization of facts under Regulation 55, that it was necessary to sever the charges against Ngudjolo so as to avoid serious prejudice that would be caused by undue delays of a joint trial."¹⁸ Similarly, in *Kony et al.*, the Court noted that continuing to proceed with a joint charges against Dominic Ongwen and the other accused who were still at large would constitute serious prejudice to Mr. Ongwen who would be stripped of his right to be tried without undue delay under Article 67(1)(c) of the Rome Statute.¹⁹

46. While the facts in *Kony et al.*, admittedly concerned the severance of charges with respect to three accused who were yet to be taken into the Court's custody, the precedent of the *ad hoc* tribunals demonstrates that serious prejudice may also result from a joinder where the accused came into custody at vastly disparate times. In *The Prosecutor v. Gotovina et al.*,²⁰ the prosecution sought to join the case of *Gotovina* to the case of *Čermak and Markač*, which, at the time of the joinder, were at vastly different stages of the proceedings – the *Čermak and Markač* indictment was confirmed two years before the *Gotovina* indictment. The Trial Chamber allowed the cases to be joined because despite the significantly earlier confirmation of the indictment in the case of *Čermak and Markač*, it found that "*the case [was] not ready for trial, no date ha[d] been fixed for the commencement of their trial, and there [was] no reason to anticipate that the setting of that date [was] imminent.*"²¹ Under these specific circumstances, the Court did not find that the accused's rights were infringed.

¹⁷ *Katanga and Ngudjolo*, ICC-01/04-01/07-3319, para. 61; *Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen*; ICC-02/04-01/05-424, paras.8,9.

¹⁸ ICC-01/04-01/07-3319, para. 24, emphasis added.

¹⁹ *Ibid.*, para. 9

²⁰ *The Prosecutor v. Gotovina et al.*, Case Nos. IT-03-73-AR73.1, IT-03-73-AR73.2, IT-01-45-AR73.1, *Decision on interlocutory appeals against the Trial Chamber's Decision to Amend the indictment and for Joinder*, Appeals Chamber, 25 October 2006.

²¹ *Ibid.*, para. 41.

47. The Defence submits that Mr. Charles Blé Goudé would suffer serious prejudice if his case were to be joined with Mr. Gbagbo's because it would undoubtedly and irreparably violate his fundamental right to adequate time to prepare for trial under Article 67(1)(b) and therein violate the principle of equality of arms. Just as in *Kony et al.*, and *Katanga and Ngudjolo* where the Court found that protecting the accused's right to be tried without undue delay necessitated the severance of charges, the Defence submits that in the instant case the Court should find that protecting Mr. Blé Goudé's fundamental right to adequate time to prepare his defence necessitates that separate trials be ordered under Rule 136.

48. Under 67(1)(b), Mr. Blé Goudé is entitled to at a minimum the guarantee that he have adequate time to prepare his defence, and under Article 67(1)(d) to legal assistance of his choosing. The Defence respectfully reminds the Chamber that on the date of the Prosecutor's Joinder request, Mr. Blé Goudé was effectively without counsel.²² Mr. Blé Goudé chose Geert Jan Knoops to be his new counsel on 7 January 2015, and the current team is still actively recruiting new members as of the date of this filing, and starting up its work, as explained at the Status Conference of 13 February 2015.

49. In light of being a new Defence team, the Defence of Charles Blé Goudé already faces the momentous task of familiarizing itself with a case that is complex both in terms of nature and size in order to prepare for a separate trial.²³ The Prosecution has itself admitted to the complexity of the case by stating that the Charles Blé Goudé case rests on mainly circumstantial evidence, and therefore relying on more than more than a hundred witnesses may be necessary to prove its case beyond a reasonable doubt.²⁴ In light of admitted complexity of the case, the Defence request for additional time to

²² ICC-02/11-02/11-201, para. 24.

²³ See ICC-02/11-02/11-201, para. 40.

²⁴ ICC-02/11-02/11-T-9-CONF-ENG, p. 39, lines 3-8.

prepare for trial – as further submitted at the Status Conference of 13 February 2015 – on 26 January 2015 bears merit.

50. If the Chamber granted Prosecution's request, then the Defence would have to also familiarize with complexity and the volume of the *Gbagbo* case.²⁵ Unlike in *Gotovina et al.*, where the trial date was not imminent for the two accused whose case was in a more advanced stage of pre-trial proceedings, in the instant case, a trial date has been set and is imminent in the case against Mr. Gbagbo who made his first appearance in front of the Court over two years before Mr. Blé Goudé. The trial against Mr. Gbagbo is scheduled to begin on 7 July 2015.²⁶ Therefore, the prejudice is no longer hypothetical like in the case of the joinder of the three accused in *Gotovina*.
51. Such a trial date would result in severe prejudice to Mr. Blé Goudé because he would have a mere year and a half to prepare for a trial since he first appeared in front of the Court, which would be significantly shorter than the four years that Mr. Gbagbo would have since his first appearance, while his new team would have had only 6-11 months for such preparation. Moreover, the Defence of Mr. Gbagbo has suggested that in view of joinder of the two cases, Mr. Gbagbo would also need more time to prepare for trial, which would result in further delays in the proceedings against him, thereby violating his fundamental right to be tried without undue delay.
52. The Defence further argues that allowing for a joint trial in the instant case would result in Mr. Blé Goudé being effectively not compensated for the fact that the authorities of Ghana and the Côte d'Ivoire kept him in *incommunicado* detention from 17 January 2013 until 22 March 2014, preventing him from preparing his case. During this period, the warrant of arrest for Mr. Blé Goudé remained sealed.

²⁵ ICC-02/11-02/11-201, para. 40.

²⁶ ICC-02/11-01/11-723.

53. Admittedly, it is not within the discretion of the Prosecution to unseal arrest warrants. However, in both *Ntaganda* and in *Kony et al.* the Prosecutor made requests to the PTC to unseal the warrants, and argued that the unsealing of warrants would aid in the capture and transfer of the suspects to the Court.²⁷ In both case, following the Prosecutor's request, the Pre-Trial Chamber unsealed the warrant.²⁸

54. In the instant case, the warrant of arrest against Blé Goudé remained under seal for almost two year,²⁹ and the Prosecutor hesitated with requesting the Court to unseal the arrest warrant for several months.³⁰ The Defence does not wish to suggest that the sealing of the arrest warrant was without cause. It simply wishes that the Chamber be equitable in its dealings with all the parties. Since the transfer of Mr. Blé Goudé was effectively halted for over a year while he remained detained in Côte d'Ivoire, the current timeline for the proceedings should reflect that halt in that Mr. Blé Goudé's case should not go to trial on the 7th of July 2015 – in the event of a joinder, and therefore, the Prosecution's Joinder Request should be rejected.

ii.) By granting the Prosecution's Joinder Request, the Chamber would subject Mr. Blé Goudé to serious prejudice by considering evidence that while admissible against Mr. Gbagbo would not be admissible against Mr. Blé Goudé in a separate trial

55. Under Rule 64(3), the Trial Chamber shall not consider evidence that is deemed irrelevant or inadmissible. However, in considering the admissible evidence during trial, the Trial Chamber may under Regulation 55 "*may change the legal characterization of facts [...] without exceeding the facts and circumstances*

²⁷ ICC-01/04-02/06-18 and ICC-02/04-01/05-52.

²⁸ ICC-01/04-02/06-18 and ICC-02/04-01/05-52.

²⁹ ICC-02/11-02/11-1, the arrest warrant has been reclassified as public pursuant to Pre-Trial Chamber I's Decision, ICC-02/11-02/11-30.

³⁰ See CC-02/11-02/11-T-1-CONF-Red-ENG ET 22-11-2012 15/19 SZ PT, p. 15, lines 9-11; See ICC-02/11-02/11-T-2-CONF-Red-ENG ET 08-02-2013 1/17 SZ PT, p.14, lines 24-25, p.15 lines 1-2.

described in the charges." The Defence submits that under Rule 136(1) the Chamber should order separate trials for Mr. Blé Goudé and Laurent Gbagbo because to do otherwise would admit into evidence potential witness testimony pertaining to the alleged common plan between the members of the so-called inner circle to all four charged incidents in presenting its case against *Laurent Gbagbo*. However, any potential evidence would only be relevant in regards to the two of the four incidents common to both cases, in the case of Charles Blé Goudé.³¹ Moreover, a joinder would assume the existence of an alleged "common plan" or connection between Mr. Gbagbo and Mr. Blé Goudé, which assumption would be prejudicial to both accused.

56. Although four of the five incidents described in both cases are similar, the factual nature of Mr Gbagbo and Mr Blé Goudé's alleged responsibility is different: Gbagbo was the former President, while Mr Blé Goudé was an alleged youth leader. This could lead to different Prosecution cases, as well as to different defences.

57. In the Document Containing the Charges ('DCC') it is stated that the implementation of the common plan was executed "*par une structure organisée et évolutive et, partant, complexe. Elle comprenait les FDS, des mercenaires, des miliciens et des jeunes pro-Gbagbo.*"³² The Prosecution's case seems to be that Mr Blé Goudé *did not* take part in the meetings with the FDS command, but was allegedly part of a parallel structure.

58. A joinder, by its very nature, presupposes that there was a connection, an organizational network or a certain bond between the accused. This, in and of itself, constitutes a prejudice towards both accused. It is premature to assume such a connection, particularly when taking into account the diverging roles the two accused allegedly fulfilled. Moreover, one of the defence arguments may be to challenge the existence of such a network, which will be of

³¹ See Annex 1.

³² ICC-02/11-02/11-124-Conf-Anx2, para. 174.

particular relevance to Mr Blé Goudé. Assuming the existence of such a network beforehand is prejudicial.

59. The Defence refers to its table in the present motion, which demonstrates that of the four charged incidents common to both Mr. Blé Goudé and Mr. Gbagbo, the Pre-Trial Chamber – in this stage – found that Mr. Blé Goudé acted as an indirect co-perpetrator under Article 25(3)(a) in only two of the four charged incidents.
60. The Defence urges the Trial Chamber to find that the admitting of such potential evidence in the case of Mr. Gbagbo would subject Mr. Blé Goudé to serious prejudice for the following two reasons: (1) under Rule 64(3), in a separate trial against Mr. Blé Goudé, the evidence pertaining to indirect co-perpetration in regards to the attack on a women's demonstration in Abobo on 3 March 2011 and the shelling of the Abobo market on 17 March 2011 would be inadmissible because this mode of liability was not confirmed by the Pre-Trial Chamber, (2) the admitting of this evidence in the *Gbagbo* case runs the serious risk that the Trial Chamber would consider such evidence in the *Blé Goudé* case if a witness primarily presents testimony relating to the position of Mr. Gbagbo during trial. In view of Regulation 55, this could also result in the Trial Chamber modifying the charges so as to reflect Mr. Blé Goudé alleged participation as indirect co-perpetrator in all five of the charged incidents. Such evidence would not be admitted but for the joinder of the two cases.
61. In case of a joinder, evidence introduced against Mr. Gbagbo on any liability mode, which was not confirmed in the case of Mr. Blé Goudé, would be automatically admitted also in Mr. Blé Goudé's case, while in the event of non-joinder, Mr. Blé Goudé would at least have procedural safeguard as guaranteed under Rule 68 of R.P.E.

Conclusion

62. Two days ago, the Prosecutor requested leave to reply to Mr. Gbagbo's defence response to the Joinder Request,³³ in which she admits that "the interpretation and application of the law on joinder pursuant to article 64(5) and rule 136 remains a novel issue before this Court."³⁴ Considering that in its Joinder Request the primary arguments on which the Prosecutor expands upon pertain to judicial economy, the Defence respectfully asks the Chamber in its balancing of the interests of judicial economy against the rights of the accused to give significant weight to the grave consequences of joinder to Mr. Blé Goudé's defence.

63. Moreover, the Defence respectfully submits that joinder does not necessarily serve the interests of judicial economy. For example, the ICTR has chosen to pursue smaller trials due in part to the excessive complications of joining of accused in the *Butare* trial, which lasted eight years.³⁵ In the instant case, the Prosecutor has not provided the Chamber with any information pertaining to the number of common witnesses in the case, which would allow the Chamber to assess whether judicial economy would be truly served.

IV. Relief Requested

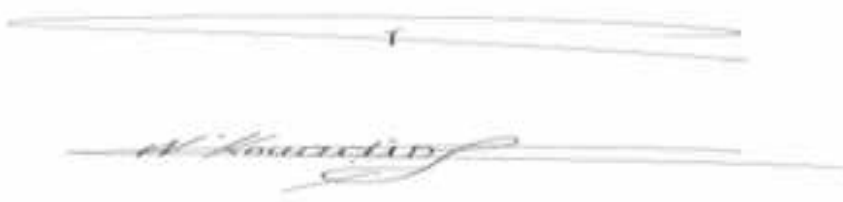
64. For the foregoing reasons, the defence respectfully requests the honourable Chamber to grant the following requests:

- a. To reject the Prosecution's Joinder Request.
- b. To order separate trials in the case of *The Prosecutor v. Gbagbo* and *The Prosecutor v. Charles Blé Goudé*.

³³ *The Prosecutor v. Gbagbo*, "Prosecution application for leave to reply to Defence response ICC-02/11-01/11-765," ICC-02/11-01/11-771.

³⁴ *Ibid*, para. 5.

³⁵ G. Acquaviva et al., *International Criminal Procedure : Principles and Rules*, p. 507, (Goran Sluiter et al. eds., 2013).



A handwritten signature in dark ink, appearing to read 'Mr. Knoop', is centered within a rectangular box. The signature is written in a cursive style with a long horizontal flourish extending to the right.

Mr. Knoop, Lead Counsel and Mr. Claver N'Dry, Co-Counsel

Dated this 19 February 2015,

At The Hague, The Netherlands