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TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. CHARLES BLÉ GOUDÉ

Public

Prosecution's consolidated response to the Defence application for an extension of time to respond to the Prosecution's request for a joinder of proceedings and to the Defence request to adjourn the status conference scheduled on 13 February 2015

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 Office of the Prosecutor (“Prosecution”) opposes the Defence application for an extension of time of seven months to respond to the Prosecution’s request for a joinder of proceedings (“Request for Extension of Time”),¹ and to the Defence request to adjourn the status conference of 13 February 2015 (“Request for Adjournment”).² The Defence has not shown good cause for either request.

2. The Request for Extension of Time is predicated on the erroneous assumption that the Defence must be fully acquainted with the complete record of both the case against Mr Blé Goudé and that against Mr Gbagbo, to respond to the Prosecution’s request to join these two cases (“Joinder Request”).³ In addition, the Defence is already in a position to adequately respond to the Joinder Request. Both Lead and Co-Counsel have been members of the Defence team, with access to the relevant portions of the case record, since before the confirmation proceedings. Furthermore, they have previously demonstrated sound knowledge of the case against Mr Blé Goudé, as well as the charges in the case against Mr Gbagbo.

3. The Request for Adjournment should also be rejected. Contrary to the Defence’s contention, resolution of the Joinder Request is unrelated to the items identified by the Trial Chamber in its scheduling order to be discussed during the status conference on 13 February 2015. In addition, given the specific and confined nature of these agenda items, the Defence submission that it does not have the time or resources required to prepare for the status conference is unsupported.

¹ ICC-02/11-02/11-201.

² ICC-02/11-02/11-204.

³ ICC-02/11-01/11-738.

Statement of facts

4. On 21 December 2011, Pre-Trial Chamber I issued a warrant of arrest under seal for Mr Charles Blé Goudé.⁴ Mr Blé Goudé was surrendered to the custody of the Court on 22 March 2014, and made his first appearance on 27 March 2014.
5. On 26 March 2014, Mr Nicholas Kaufman was appointed as counsel for Mr Blé Goudé.⁵
6. On 19 August 2014, Mr Claver N'dry was appointed as Legal Assistant to the Defence of Mr Blé Goudé.⁶ On 25 August 2014, the Registry provided the Defence with the login details for the access to all eCourt applications for Mr N'dry.⁷
7. On 8 September 2014, Mr Geert-Jan Alexander Knoops was appointed as *pro bono* Assistant Counsel for Mr Blé Goudé.⁸ On 16 September 2014, the Registry provided the Defence with login details for Mr Knoops to access to all eCourt applications.⁹
8. From 29 September 2014 until 2 October 2014, the confirmation of charges hearing was held before the Pre-Trial Chamber.¹⁰ During this hearing, both Mr Knoops and Mr N'dry were present when the Prosecution presented its case and supporting evidence before the Pre-Trial Chamber. In addition, during their own submissions, both demonstrated a sound knowledge of the case against Mr Blé Goudé. Mr Knoops made extensive submissions, in which he discussed, among other topics, the facts of the case relevant to the contextual elements of the crimes, and drew extensive comparisons between the cases against Mr Blé Goudé and that against Mr Gbagbo, as previously confirmed by the Pre-Trial Chamber.¹¹ Mr

⁴ ICC-02/11-02/11-1.

⁵ ICC-02/11-02/11-49.

⁶ ICC-02/11-02/11-156, p.3; Email sent by CMS to the Chamber, Parties and participants on 3 February 2015 at 16h22.

⁷ Email sent by CMS to the Chamber, Parties and participants on 3 February 2015 at 16h22.

⁸ Request for Extension of Time, para.13; ICC-02/11-02/11-T-6-Red-ENG, p.35, lns.11-12.

⁹ Email sent by CMS to the Chamber, Parties and participants on 3 February 2015 at 16h22.

¹⁰ ICC-02/11-02/11-T-5-Red-ENG; ICC-02/11-02/11-T-6-Red-ENG; ICC-02/11-02/11-T-7-Red-ENG; ICC-02/11-02/11-T-8-Red-ENG.

¹¹ ICC-02/11-02/11-T-6-Red-ENG, p.35 ln.2-p.45 ln.13.

N'dry's submissions canvassed an analysis of the Prosecution's investigations, the charges against Mr Blé Goudé, as well as the Prosecution's evidence. He also presented portions of the Defence theory of the case and its supporting evidence.¹²

9. On 11 December 2014, the Pre-Trial Chamber confirmed the charges against Mr Blé Goudé.¹³
10. On 16 December 2014, the Prosecution filed, in the case against Mr Gbagbo, its Joinder Request.¹⁴ On 22 December 2014, the Prosecution filed its Joinder Request in the case against Mr Blé Goudé.¹⁵
11. On 19 December 2015, Mr Kaufman requested leave to withdraw from the case.¹⁶ He informed the Chamber that Mr Blé Goudé "indicated his wish to appoint his *pro-bono* team member as replacement Counsel".¹⁷
12. On 22 December 2014, the Registry indicated that new counsel would be ready to be appointed upon the excusal of Mr Kaufman, and that there would be no gap in the legal representation of Mr Blé Goudé.¹⁸
13. On 6 January 2015, the Trial Chamber granted Mr Kaufman's request to withdraw from the case.¹⁹ In the same decision, it extended the deadline for the Defence to file any response to the Joinder Request within 21 days of notification of the French translation of the Joinder Request and of the Blé Goudé confirmation decision,²⁰ which were notified on 21 January 2015²¹ and on 20 January 2015²²

¹² ICC-02/11-02/11-T-6-Red-ENG, p.45, ln.21-p.61, ln.12.

¹³ ICC-02/11-02/11-186.

¹⁴ ICC-02/11-01/11-738.

¹⁵ ICC-02/11-02/11-194.

¹⁶ ICC-02/11-02/11-192-Anx.

¹⁷ ICC-02/11-02/11-192-Anx, para.3.

¹⁸ ICC-02/11-02/11-197, para.4.

¹⁹ ICC-02/11-02/11-197.

²⁰ ICC-02/11-02/11-197, para.12.

²¹ ICC-02/11-01/11-738-tFRA.

²² ICC-02/11-02/11-186-tFRA.

respectively. Accordingly, the Defence has until 12 February 2015 to respond to the Joinder Request.²³

14. On 7 January 2015, Mr Knoop was appointed Lead Counsel for Mr Blé Goudé and on 13 January 2015, Mr N'dry was appointed Co-Counsel.²⁴ In this new capacity, they were given Ringtail access codes on 12 January 2015 and 14 January 2015 respectively.²⁵

Submission

(a) The Request for Extension of Time should be rejected

15. The Defence fails to show good cause for an extension of time to respond to the Joinder Request.
16. The Defence's request for an additional seven months²⁶ is predicated on the erroneous assumption that the Defence must be fully acquainted with the complete record of both cases sought to be joined to adequately respond to the Joinder Request. However, the Defence is already in a position to respond to the Joinder Request. During the confirmation of charges proceedings, both Lead Counsel and Co-Counsel, through their respective submissions, demonstrated a sound knowledge of the case against Mr Blé Goudé and of the charges in the case against Mr Gbagbo.

Erroneous assumption as to the scope of the Joinder Request

17. The Request for Extension of Time overstates the complexity of the preparation required to respond to the Joinder Request.²⁷ Contrary to the Defence contention,²⁸ a response to the Joinder Request, does not require counsel to be "fully

²³ See email from CMS to the Parties and participants, dated 22 January 2015 at 13h26.

²⁴ Request for Extension of Time, para.13.

²⁵ Request for Extension of Time, para.13.

²⁶ Request for Extension of Time, para.23.

²⁷ Request for Extension of Time, paras.40, 43.

²⁸ Request for Extension of Time, para.43.

acquainted with the case”²⁹ nor an analysis of “all previous filings [...] and decisions by the Pre-Trial Chamber.³⁰ Equally, it does not require knowledge of the entirety of the evidentiary record during pre-trial proceedings³¹ in both the *Blé Goudé* and *Gbagbo* cases.

18. The Joinder Request is a confined motion. The Prosecution is asking for a joint trial against Mr Blé Goudé and Mr Gbagbo pursuant to article 64(5) of the Rome Statute (“Statute”) and rule 136 of the Rules of Procedure and Evidence (“Rules”) primarily because of the significant overlap between these two cases.³² The charges in the two cases as confirmed by the Pre-Trial Chamber are almost entirely identical³³ and the Prosecution is planning to rely on the same evidence to establish the guilt of both Accused.³⁴ In addition, in its Joinder Request, the Prosecution has highlighted the benefits of a joint trial for the witnesses,³⁵ judicial economy,³⁶ and the consistency of proceedings³⁷ and it has submitted that joint proceedings will not result in any unfair prejudice to the Accused persons.³⁸

19. In its response, apart from addressing the matters raised by the Prosecution, the Defence may also comment on the factors set out in rule 136(1). This rule provides that separate trials may be 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 [...]”. This will not require the Defence to analyse all filings and evidence in the record of both cases.

20. The question of joinder is a preliminary procedural matter. This is not the time for Mr Blé Goudé to defend himself against the charges or to challenge the Prosecution evidence. The sole question to be addressed by the Defence at this

²⁹ Request for Extension of Time, para.43.

³⁰ Request for Extension of Time, para.23.

³¹ Request for Extension of Time, paras.23, 29, 40.

³² Joinder Request, paras.10-16.

³³ Joinder Request, paras.14-15.

³⁴ Joinder Request, paras.13, 18.

³⁵ Joinder Request, para.17.

³⁶ Joinder Request, para.18.

³⁷ Joinder Request, para.19.

³⁸ Joinder Request, paras.20-22.

stage is whether joinder of cases would cause serious and unfair prejudice to the Accused.

21. Finally, the Joinder Request should be considered separately from the question as to the time and facilities that are necessary for Mr Blé Goudé to prepare his defence.³⁹ His right under article 67(1)(b) to have adequate time to prepare his defence will be fully protected irrespective of a prompt joinder of the cases. In the event of a joinder, the Trial Chamber will ensure that the joint trial is conducted fairly and that the rights of both Accused are fully protected.⁴⁰

The Defence is in a position to adequately respond to the Joinder Request

22. The Defence is already in a position to adequately respond to the Joinder Request. Both Mr Knoops, the current Lead Counsel and Mr N'dry, the current Co-Counsel, are not new to the Defence team for Mr Blé Goudé. They were both assigned to the Defence team prior to the confirmation of charges hearing.⁴¹ In addition, contrary to the contention of the Defence that “neither [of the current members of the Defence] had previous access to case material”,⁴² a communication received from the Registry yesterday indicates otherwise. Mr Knoops and Mr N'dry were given access to all eCourt applications soon after their initial appointments to the Defence team prior to the confirmation hearing.⁴³ This included access to all confidential filings and decisions in the case as well as the extensive Document containing the charges,⁴⁴ List of Evidence⁴⁵ and the incriminating evidence disclosed and released by the Prosecution in E-court to the Parties, participants and the Chamber.⁴⁶

³⁹ *Contra*, Request for Extension of Time, para.40 last sentence.

⁴⁰ Article 64(2); rule 136(2). See for instance *Prosecutor v. Salim Jamil Ayyash et al.*, STL-11-01/T/TC, Decision on trial management and reasons for decision on joinder, 25 February 2014, paras.52-54, 92. <http://www.stl-tsl.org/en/the-cases/stl-11-01/main/filings/orders-and-decisions/trial-chamber/f1424>

⁴¹ See paras.6-7 above.

⁴² Request for Extension of Time, para.43.

⁴³ Email sent by CMS to the Chamber, Parties and participants on 3 February 2015 at 16h22.

⁴⁴ ICC-02/11-02/11-124-Conf-Anx2-Corr.

⁴⁵ ICC-02/11-02/11-124-Conf-Anx3-Corr.

⁴⁶ ICC-02/11-02/11-57 and ICC-02/11-02/11-59.

23. Mr Knoops and Mr N'dry played an active role in the confirmation hearing, during which they demonstrated they had a sound knowledge of the case against Mr Blé Goudé and the charges against Mr Gbagbo. As demonstrated in the above statement of facts,⁴⁷ both made submissions, among others, with respect to the facts and charges in the present case. Mr Knoops also drew extensive comparisons between the charges in the case against Mr Blé Goudé and that against Mr Gbagbo.

24. It is irrelevant that both Counsel had different titles during their prior involvement in this case. What matters is that they had access to the relevant portions of the case record already prior to the confirmation hearing and that they clearly demonstrated they had adequate knowledge of the case at that stage. It may also be assumed that during their continuous involvement in the case after the confirmation hearing, they expanded their knowledge of the case. Co-counsel certainly did since he was publicly commenting on the strength of the Prosecution case and the possibility of appealing the confirmation decision as early as mid-December 2014.⁴⁸ As a result, by the time they were appointed as Lead Counsel and Co-Counsel respectively in early January 2015,⁴⁹ they already had good knowledge of the case, including of the confirmation of charges decision and the Joinder Request. The Prosecution understands that it was in this context that the Registry submitted on 22 December 2014 that upon excusal of Mr Kaufman, there would be no gap in the legal representation of Mr Blé Goudé.⁵⁰

25. The Defence is in a position to adequately respond to the Joinder Request. Both Lead Counsel and Co-Counsel have been representing the Accused for over five months. Both have been on notice since at least 27 October 2014 that the Prosecution would seek a joinder of the cases.⁵¹ On 4 November 2014, at the first

⁴⁷ See para.8 above.

⁴⁸ <http://www.linfodrome.com/vie-politique/18292-me-n-dry-claver-avocat-de-ble-goude-la-politique-est-entree-a-la-cour>.

⁴⁹ See para.14 above.

⁵⁰ ICC-02/11-02/11-197, para.4.

⁵¹ See ICC-02/11-01/11-708, para.5.

pre-trial status conference, the Prosecution publicly reiterated that it would seek a joinder.⁵² That same day, Mr Kaufman publicly commented that any such joinder was “wishful thinking”.⁵³ As members of the Defence team led by Mr Kaufman, Mr Knoops and Mr N’dry were formally notified of the Joinder Request on 16 December 2014, almost two months before the deadline to file their response to the Joinder Request.⁵⁴ In any event, the response to the Joinder Request is not due until a date five weeks after Mr Knoops’ appointment as Lead Counsel and approximately one month after Mr N’dry was appointed as Co-Counsel. Given the confined nature of the Joinder Request,⁵⁵ the Defence does not provide any convincing reason why it cannot adequately prepare submissions on the matter within a period that already exceeds the time that is ordinarily given to a party to respond to procedural motions of this nature.⁵⁶

26. The fact that the Defence is currently dealing with the “time consuming burden of appointing new team members⁵⁷ and training them”⁵⁸ does not detract from its ability to file a timely response to the Joinder Request.

(b) The Request for Adjournment should be rejected

27. The Defence also fails to show good cause to adjourn the status conference on 13 February 2015.

28. The Request for Adjournment is linked to its Request for Extension of Time and is predicated on the same misunderstanding of the scope of the Joinder Request.⁵⁹ The Defence submits that “without the effective resolution of the [Request for Extension of Time] and the mentioned request to the registry [for more resources], the Defence is incapacitated in terms of time and resources, to prepare

⁵² ICC-02/11-01/11-T-25-CONF-ENG CT, lns. 4 to 9.

⁵³ <http://bigstory.ap.org/article/b81ef98850af48faab0bfd55ea871401/icc-prosecutors-want-joint-ivory-coast-trial>

⁵⁴ ICC-02/11-01/11-738, see notification page.

⁵⁵ See paras.17-21 above.

⁵⁶ See regulation 34(b) of the Regulations of the Court.

⁵⁷ Email set by CMS to the Chamber, Parties and participants on 3 February 2015 at 16h22.

⁵⁸ Request for Extension of Time, para.39.

⁵⁹ Request for Adjournment, paras.1-2.

for trial and to address any of the items on the provisional agenda of the scheduled status conference”.⁶⁰

29. The resolution of the Joinder Request is unrelated to the items identified by the Trial Chamber in its scheduling order to be discussed during the status conference on 13 February 2015.⁶¹ All of these items have already been discussed in the case against Mr Gbagbo, which the Prosecution seeks to join with the case against Mr Blé Goudé. Although some items, such as the date of the trial, may need to be discussed further if the cases are joined, nothing prevents the Parties and participants from making submissions on the matter at this stage of the proceedings.

30. In addition, the Defence’s submission that it does not have the time or the resources to prepare for the Status Conference is unsupported. The Defence does not need to analyse the entire record of the cases against Mr Blé Goudé and Mr Gbagbo⁶² to address the Court on the items identified in the Scheduling Order. The submissions sought by the Trial Chamber from the Defence are very confined. The Defence in its current composition can be expected to be ready and able to provide that information.

31. In particular, items (a) and (c) do not relate to the Defence, but only to the Prosecution’s disclosure obligations. Similarly, on item (b), the Chamber seeks the views from the Prosecution only on matters concerning protection and redactions. Item (d) is a purely procedural matter concerning victims’ participation. On item (e) the Defence is not expected to identify any of its future witness but to inform the Chamber to the best of its knowledge of the “languages spoken by the witnesses [it] intend[s] to call”. Under item (f) the Defence has an opportunity to make submissions on the commencement date of the trial. It indirectly has made

⁶⁰ Request for Adjournment, para.3.

⁶¹ ICC-02/11-02/11-200 (“Scheduling Order”).

⁶² Request for Adjournment, para.1.

submissions to that effect already in its Request for Extension of Time.⁶³ Finally, under item (g) the Defence is invited to make submissions regarding Mr Blé Goudé's detention. Submissions on these matters are unrelated to the charges and the evidence in this case and should be matters which the Defence team can provide at this stage.

Conclusion

32. For the reasons set out above, the Request for Extension of Time and the Request for Adjournment should be rejected.



Fatou Bensouda, Prosecutor

Dated this 4th day of February 2015

At The Hague, The Netherlands

⁶³ Request for Extension of Time, paras.20-36.