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No.: ICC-02/11-02/11
Date: 12 December 2014

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Ekaterina Trendafilova
Judge Christine Van den Wyngaert

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. CHARLES BLÉ GOUDÉ***

Public Document

Response of the Common Legal Representative of Victims to the "Defence application for variation of the time limit for seeking leave to appeal the Decision on the Confirmation of Charges"

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 30 September 2013, the warrant of arrest issued against Mr. Blé Goudé by Pre-Trial Chamber III on 21 December 2011 was made public.¹

2. On 22 March 2014, Mr. Blé Goudé was surrendered to the Court.

3. On 27 March 2014, Mr. Blé Goudé made his initial appearance before Pre-Trial Chamber I (the “Chamber”).²

4. On 11 June 2014, the Chamber decided to admit 199 applicants as victims at the confirmation of charges hearing and in the related proceedings, appointed the Office of Public Counsel for Victims (the “OPCV” or the “Office”) as the Common Legal Representative of said victims, and specified the manner of their participation in the proceedings.³

5. On 11 July 2014, the Chamber decided to postpone the confirmation of charges hearing to 22 September 2014, and ordered the Prosecutor to file the Document Containing the Charges and its List of Evidence by 22 August 2014.⁴

6. On 1 August 2014, the Chamber decided to admit 271 applicants as victims at the confirmation of charges hearing and in the related proceedings, appointed the OPCV as the Common Legal Representative of said victims, and specified the

¹ See the “Warrant Of Arrest For Charles Blé Goudé” (Pre-Trial Chamber III), No. ICC-02/11-02/11-1, 21 December 2011.

² See the transcript of the hearing held on 27 March 2014, No. ICC-02/11-02/11-T-3-Red-ENG.

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, 11 June 2014, pp. 19-21.

⁴ See the “Public Redacted Decision on the ‘Prosecution’s Request for Variation of Time Limits Pursuant to Regulation 35 concerning the Confirmation of Charges’” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-108-Red, 11 July 2014, p. 7.

manner of their participation in the proceedings.⁵

7. The confirmation of charges hearing was held between 29 September and 2 October 2014.⁶

8. On 11 December 2014, the Chamber issued the “Decision on the confirmation of charges against Charles Blé Goudé” (the “Decision”),⁷ whereby the Majority of the Chamber confirmed the charges against Mr. Blé Goudé and committed him to a Trial Chamber for trial on the charges as confirmed.⁸

9. On 12 December 2014, the “Defence application for variation of the time limit for seeking leave to appeal the Decision on the Confirmation of Charges” (the “Request for Variation of Time Limit”) was transmitted to the parties and participants.⁹ The same day, the Single Judge requested any responses to this request to be filed no later than 16.00 h on 12 December 2014.¹⁰

10. Pursuant to regulations 24(2) and 34 of the Regulations of the Court, the Principal Counsel of the OPCV, acting as Common Legal Representative of the victims (the “Common Legal Representative”) admitted to participate in this case,¹¹ files the following response to the Request for Variation of Time Limit.

⁵ See the “Second Decision on victims’ participation in the pre-trial proceedings and related issues” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-111, 1 August 2014, pp. 13-15.

⁶ See the transcripts of the confirmation of charges hearing sessions held on 29 and 30 September 2014 and 1 and 2 October 2014, Nos. ICC-02/11-02/11-T-5-CONF-ENG ET, ICC-02/11-02/11-T-6-CONF-ENG ET, ICC-02/11-02/11-T-7-CONF-ENG, and ICC-02/11-02/11-T-8-CONF-ENG ET.

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 “Decision”).

⁸ See the Decision, *supra* note 7, paras. 182-194.

⁹ See the “Defence application for variation of the time limit for seeking leave to appeal the Decision on the Confirmation of Charges”, No. ICC-02/11-02/11-187, 12 December 2014 (the “Request for Variation of Time Limit”).

¹⁰ See e-mail received from the Legal Officer of Pre-Trial Chamber I on 12 December 2014 at 11:47.

¹¹ See *supra* notes 3 and 5.

II. COMMON LEGAL REPRESENTATIVE'S RESPONSE

11. The Common Legal Representative submits that the wish of the victims authorised to participate in this case is to have the proceedings expedited, without unfairly affecting the rights granted to Mr. Blé Goudé by the legal instruments of the Court. In this regard, the Common Legal Representative agrees that, in the current factual circumstances, the Defence may find it difficult to file a request for leave to appeal against the Confirmation Decision. However, the Common Legal Representative opposes the Request for Variation of Time Limit, since the measures requested by the Defence are unnecessary and disproportionate.

12. Firstly, the Common Legal Representative contends that the Defence fails to consider the factual circumstances surrounding the decisions it seeks to rely upon. Whereas it is true that the Pre-Trial Chambers in the *Bemba*, *Mbarushimana*, *Abu Garda* and *Gbagbo* cases extended the time limit for the Defence to file a request for leave to appeal,¹² it is also true that the Decision is much more limited in length than the decisions confirming the charges in said cases.¹³

13. Accordingly, whereas the Chambers in the cases referred to by the Defence expressly decided that the deadline to request leave to appeal under rule 155 would start to run from the notification of the French translation of the confirmation decision, the Chamber in this case may decide that the more limited length of the Decision does not merit a similar measure.

14. Secondly, the Common Legal Representative does not question Mr. Blé Goudé's "*discomfort with the English language*" and the fact that he "*préfère parler*

¹² See the Request for Variation of Time Limit, *supra* note 9, para. 5.

¹³ The Decision, *supra* note 7, and the Partly Dissenting Opinion of Judge Van den Wyngaert comprise 97 pages, whereas the confirmation decisions in the *Bemba* (No. ICC-01/05-01/08-424, 15 June 2009), *Abu Garda* (No. ICC-02/05-02/09-243-Red, 8 February 2010), *Mbarushimana* (No. ICC-01/04-01/10-465-Red, 16 December 2011), and *Gbagbo* (No. ICC-02/11-01/11-656-Red, 12 June 2014) cases comprised, respectively, 186 pages, 103 pages, 215 pages, and 131 pages.

français".¹⁴ However, the Common Legal Representative contends that Mr. Blé Goudé's level of English does not prevent him from understanding the Decision and instructing his Counsel, who is fully proficient in English, to prepare the request for leave to appeal. In fact, as noted by the Defence,¹⁵ during his initial appearance Mr. Blé Goudé confirmed that he can speak English.¹⁶ Moreover, certain evidence presented by the Prosecution during the confirmation hearing,¹⁷ not challenged by the Defence,¹⁸ shows that Mr. Blé Goudé conducted advanced studies in Manchester (England) in 2001 and gave interviews to reporters in English. Even Mr. Blé Goudé himself referred to his studies in England during the confirmation hearing.¹⁹

15. From this perspective, the comparison made by the Defence with the *Bemba* case is not appropriate, since although it may be "*public knowledge that Mr. Bemba 'can' also speak English*",²⁰ unlike the reality of the current case, said fact was not part of the record in those proceedings.

16. In these circumstances, even if Mr. Blé Goudé could not be said to fully understand and speak English, the Common Legal Representative contends that it is also clear that English is a language familiar to him.

17. Thirdly, the legal standard set by the Appeals Chamber under article 61(7) of the Rome Statute cannot be read to determine that an individual must understand technical language in order to be considered to be able to fully understand and speak

¹⁴ See the Request for Variation of Time Limit, *supra* note 9, paras. 11 and 18.

¹⁵ *Idem*, para. 11.

¹⁶ See the transcript of the hearing held on 27 March 2014, No. ICC-02/11-02/11-T-3-Red-FRA WT, p. 4, lines 3-7.

¹⁷ See CIV-OTP-0057-1245 ("*Ma part de vérité*"), at 1293-1294. See also the transcript of the hearing held on 29 September 2014, No. ICC-02/11-02/11-T-5-CONF-ENG ET, page 39, lines 14-16 (public session), page 41, lines 17-19 (public session), and page 89, lines 6-10 (public session).

¹⁸ See the transcript of the hearing held on 30 September 2014, No. ICC-02/11-02/11-T-6-CONF-ENG ET, page 46, lines 23-25 (public session), page 47, lines 1-7 (public session) and page 50, lines 1-2 (public session).

¹⁹ See the transcript of the hearing held on 2 October 2014, No. ICC-02/11-02/11-T-8-CONF-ENG ET, page 51, lines 24-25 (public session) and page 52, line 25 (public session).

²⁰ See the Request for Variation of Time Limit, *supra* note 9, para. 11.

a language.²¹ Consequently, the Common Legal Representatives disagrees with the argument of the Defence that a translation of the Decision must be provided to Mr. Blé Goudé because he is “unable to analyse and discuss the legal technicalities of this document [the Decision] in a language that he fully understands”.²² In fact, the Defence subsequently concedes that “Article 67(1) requires fluency in ‘ordinary, nontechnical conversation’”.²³

18. In conclusion, the Common Legal Representative disagrees with the Defence’s contention that because Mr. Blé Goudé does not fully understand and speak English, he must rely on a French translation of the Decision in order to give effect to his defence and fair trial rights as enshrined by article 67(1) of the Rome Statute when it comes to preparing the intended request for leave to appeal the Decision.²⁴

19. In the current circumstances, the Common Legal Representative considers that the assistance of an interpreter to provide sight translation of the Decision in accordance with regulation 61(1)(e) of the Regulations of the Registry could more efficiently achieve the same result. This would be a proportionate measure to ensure the right of the Defence to request leave to appeal without impinging on the expediency of the proceedings.

20. In fact, the Appeals Chamber in the *Bemba* case adopted this approach when deciding on a request by the Defence for the translation into French of a decision under appeal comprising over 100 pages.²⁵

²¹ See the “Judgment on the appeal of Mr. Germain Katanga against the decision of Prc-Trial Chamber I entitled ‘Decision on the Defence Request Concerning Languages’” (Appeals Chamber), No. ICC-01/04-01/07-522 OA3, 27 May 2008, para. 61 (“An accused fully understands and speaks a language when he or she is completely fluent in the language in ordinary, nontechnical conversation; it is not required that he or she has an understanding as if he or she were trained as a lawyer or judicial officer.”).

²² See the Request for Variation of Time Limit, *supra* note 9, para. 13.

²³ *Idem*, para. 19.

²⁴ *Ibid.*, para. 10.

²⁵ See the “Decision on the request for an extension of the time limit” (Appeals Chamber), No. ICC-01/05-01/08-827 OA3, 15 July 2010, paras. 8 and 10.

21. In the present case, the Common Legal Representative suggests that the 5-day time limit provided for in rule 155(1) of the Rules of Procedure and Evidence for filing a request for leave to appeal could be set to start from the moment said interpreter is provided to the Defence.

22. In the alternative, if the Chamber agrees with the Defence that a French translation of the Decision is required to ensure the rights of the Defence, the Common Legal Representative submits that said translation must be limited to the indispensable parts of the Decision.²⁶

23. Moreover, in the Common Legal Representative's opinion, there is not need to translate the footnotes of the Decision to prepare a request for leave to appeal. The other portions of the Decision may be translated or paraphrased for Mr. Blé Goudé or fully explained to him by the Defence team, as it has been the practice with other filings and decisions that are provided in English.²⁷

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Pre-Trial Chamber to reject the Request for Variation of Time Limit, or in the alternative, to grant it to the limited extent explained above.



Paolina Massidda
Principal Counsel

Dated this 12th day of December 2014

At The Hague, The Netherlands

²⁶ See, for instance, the Decision, *supra* note 7, paras. 10-16 ("Preliminary remarks") and 114-194 ("Findings of the Chamber").

²⁷ See the Request for Variation of Time Limit, *supra* note 9, para. 12.