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No.: ICC-02/11-01/12
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PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernandez de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

SITUATION IN THE REPUBLIC OF COTE D'IVOIRE

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

Public Document

**Response to the request for leave to submit *amicus curiae* observations pursuant
to Rule 103(1) of the Rules of Procedure and Evidence**

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 21 December 2011, Pre-Trial Chamber III issued a sealed warrant of arrest against Mr Charles Blé Goudé.¹
2. On 29 February 2012, Pre-Trial Chamber III issued a sealed warrant of arrest against Ms Simone Gbagbo.²
3. On 15 March 2012, the Presidency decided to dissolve Pre-Trial Chamber III and assigned the situation in Côte d'Ivoire to Pre-Trial Chamber I.³
4. Pre-Trial Chamber I lifted the seal on the warrant of arrest against Ms Gbagbo on 22 November 2012.
5. On 30 September 2013, the Single Judge of Pre-Trial Chamber I lifted the seal on the warrant of arrest against Mr Blé Goudé.⁴ On the same day, Côte d'Ivoire filed a challenge to the admissibility of the case against Ms Gbagbo (the "Admissibility Challenge").⁵
6. On 15 November 2013, Pre-Trial Chamber I rendered its "Decision on the conduct of the proceedings following Côte d'Ivoire's challenge to the admissibility of

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 "Warrant of Arrest for Simone Gbagbo" (Pre-Trial Chamber III), No. ICC-02/11-01/12-1, 29 February 2012.

³ See the "Decision on the constitution of Pre-Trial Chambers and on the assignment of the Democratic Republic of the Congo, Darfur, Sudan and Côte d'Ivoire situations" (Presidency), No. ICC-02/11-02/11-7, 15 March 2012, p. 4.

⁴ See the "Decision reclassifying the warrant of arrest against Charles Blé Goudé and other documents" (Pre-Trial Chamber I), No. ICC-02/11-02/11-30, 30 September 2013 (notified on 1 October 2013), p. 4.

⁵ See the "Requête de la République de Côte d'Ivoire sur la recevabilité de l'affaire Le Procureur c. Simone Gbagbo, et demande de sursis à exécution en vertu des articles 17, 19 et 95 du Statut de Rome", No. ICC-02/11-01/12-11-Red, 30 September 2013 (notified on 1 October 2013) (the "Admissibility Challenge").

the case against Simone Gbagbo”,⁶ whereby it decided *inter alia* to appoint Paolina Massidda from the Office of Public Counsel for Victims (the “OPCV”) as legal representative of the victims who have already communicated with the Court in relation to the case against Ms Gbagbo for the purposes of the proceedings following the Admissibility Challenge.⁷

7. On 18 November 2013, Mr Blé Goudé filed a “Request for leave to submit *amicus curiae* observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence” (the “Request”),⁸ whereby Counsel for Mr Blé Goudé requested authorisation to file a an *amicus curiae* brief in the context of the Admissibility Challenge “on Côte d’Ivoire’s general willingness to prosecute individuals suspected of involvement in the post-election violence (“PEV”) and its ability ‘genuinely to prosecute’ the Suspect [Ms Gbagbo]”, and to be granted “access to all the confidential materials annexed to the Admissibility Challenge and supplied to OPCV”.⁹

8. Pursuant to regulation 24(1) of the Regulations of the Court, the Principal Counsel of the OPCV, acting as Legal Representative of the victims for the purpose of the admissibility proceedings, submits her response to the Request.

II. LEGAL REPRESENTATIVE’S RESPONSE

9. The Legal Representative opposes the Request for leave to submit *amicus curiae* observations on the basis that it does not clearly identify the person suggested to provide observations to the Chamber as *amicus curiae*; it fails to provide any evidence of the expertise of this person on the issues he seeks to address as *amicus*

⁶ See the “Decision on the conduct of the proceedings following Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo” (Pre-Trial Chamber I), No. ICC-02/11-01/12-15, 15 November 2013.

⁷ *Idem*, p. 9.

⁸ See the “Request for leave to submit *amicus curiae* observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence”, No. ICC-02/11-01/12-16, 18 November 2013 (the “Request”).

⁹ *Idem*, para. 27.

curiae, and of the independence of said person from the parties and participants in the current proceedings. The Legal Representative understands the interest of Mr Blé Goudé's Counsel in gaining access to the confidential documents supporting the admissibility challenge filed by Côte d'Ivoire concerning the case against Ms Gbagbo. However, the Legal Representative contends that said interest alone is irrelevant and insufficient to grant a request under rule 103 of the Rules of Procedure and Evidence.

1. The Request does not clearly identify the proposed *amicus curiae*

10. The Legal Representative notes that the Request does not consistently refer to the person suggested as *amicus curiae*. In some parts, the Request appears to identify Mr Blé Goudé as potential *amicus curiae*, since the motion refers to "the Applicant" as "an alleged co-perpetrator".¹⁰ In other parts of the Request, however, reference is made to the "Counsel for Charles Blé Goudé",¹¹ namely Mr Kaufman, as suggested *amicus curiae*. As a sort of combination of these two alternatives, the Request eventually refers to Mr Kaufman submitting *amicus curiae* observations "on behalf of the Applicant".¹²

11. Given this lack of clarity as to the identity of the suggested *amicus curiae*, the Legal Representative submits that it is not possible to determine with certainty whether the "Applicant" possesses the expertise and experience required to serve as *amicus curiae* in the present case. Accordingly, the Request should be dismissed.

12. In this regard, other international institutions have similarly dismissed applications to submit observations as *amici curiae* upon finding that a failure to clearly identify the persons suggested to serve as "friends of the court" prevented the judges from assessing the alleged expertise and experience of the applicants.¹³

¹⁰ See the Request, *supra* note 8, paras. 15 and 23.

¹¹ *Idem*, paras. 1 and 16.

¹² *Ibid.*, paras. 3 and 27(1).

¹³ See *e.g.* International Centre for Settlement of Investment Disputes, Case No. ARB/03/17, *Aguas Provinciales de Santa Fe S.A., Suez, Sociedad General de Aguas de Barcelona S.A. and InterAguas Servicios*

2. The Applicant does not have the specific expertise required to serve as *amicus curiae*

13. In any case, the Legal Representative submits that the “Applicant”, be it Mr Blé Goudé or his Counsel, fails to demonstrate that he has the required expertise to serve as *amicus curiae* in these proceedings.

14. The different Chambers of the Court have consistently considered whether those applying for leave to submit observations as *amici curiae* under rule 103 of the Rules of Procedure and Evidence satisfy the relevant Chamber that they have expertise on the topic(s) they seek to address as *amici curiae*.¹⁴

15. Otherwise, it would be impossible to determine to what extent their submissions will assist the Court regarding the specific matter(s) on which a Chamber must rule. This requirement stems from the *rationale* for admitting *amici*

Integrales del Agua S.A. v. Argentina, “Order in Response to a Petition for Participation as *Amicus Curiae*”, 17 March 2006, paras. 23 and 30. This document is available at the following address: https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC512_En&caseId=C18. See also International Centre for Settlement of Investment Disputes, Case No. ARB/03/19, *Suez, Sociedad General de Aguas de Barcelona, S.A., and Vivendi Universal S.A. v. Argentina*, “Order in Response to a Petition by Five Non-Governmental Organizations for Permission to Make an *Amicus Curiae* Submission”, 12 February 2007, paras. 13 and 15. This document is available at the following address:

https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC519_En&caseId=C19.

¹⁴ See the “Decision on the ‘Request by Ms. Moraa Gesicho to Appear as *Amicus Curiae*’” (Pre-Trial Chamber II), No. ICC-01/09-02/11-54, 12 April 2011, para. 15; the “Decision on the ‘Request for leave to submit *Amicus Curiae* Observations on behalf of the Kenyan Section of the International Commission of Jurists Pursuant to Rule 103 of the Rules of Procedure and Evidence’” (Pre-Trial Chamber II), No. ICC-01/09-02/11-87, 11 May 2011, para. 8; the “Decision on the ‘Request for leave to submit *Amicus Curiae* observations pursuant to Rule 103 of the Rules of Procedure and Evidence’” (Pre-Trial Chamber II), No. ICC-01/09-02/11-118, 13 June 2011, para. 7; the “Decision on the ‘Application by Redress Trust for Leave to Submit Observations to Pre-Trial Chamber III of the International Criminal Court Pursuant to Rule 103 of the Rules of Procedure and Evidence’” (Pre-Trial Chamber III), No. ICC-02/11-01/11-50, 8 March 2012, paras. 5 and 7; and the “Decision on the application by Child Soldiers International for leave to submit observations pursuant to rule 103 of the Rules of Procedure and Evidence” (Appeals Chamber), No. ICC-01/04-01/06-3044 A4 A5 A6, 16 August 2013, para. 11. See also the “Decision on responses to observations submitted under Rule 103” (Pre-Trial Chamber II), No. ICC-02/04-01/05-357, 21 November 2008 (notified on 24 November 2008), paras. 16-18.

curiae in the proceedings, namely “to have the opportunity to get experts’ information on relevant issues of legal interest for the proceedings”.¹⁵

16. As noted in the Request,¹⁶ in the *Al Bashir* case the Appeals Chamber granted permission to submit *amicus curiae* briefs because it found it to be “desirable for the proper conduct of the appeal”.¹⁷ But the Appeals Chamber reached this conclusion on the basis that the Prosecutor was the only participant to have made submissions before the Appeals Chamber on the issue at stake.¹⁸ By contrast, in this case Côte d’Ivoire has already submitted its views on the admissibility of the case against Ms Gbagbo,¹⁹ and Ms Gbagbo has been granted the opportunity to submit observations pursuant to article 19(2) of the Rome Statute.²⁰ Moreover, victims who have communicated with the Court in relation to the present case have also been invited to submit observations on the Admissibility Challenge.²¹

17. Consequently, contrary to the arguments put forward by Mr Blé Goudé’s Defence,²² the Appeals Chamber has not qualified or contradicted the requirement of specific expertise. Specific expertise from those requesting leave to submit observations as *amici curiae* has not only been consistently required by the Court,²³ but also by other international tribunals dealing with requests to submit *amicus curiae* observations.²⁴

¹⁵ See the “Decision on the Request submitted pursuant to rule 103(1) of the Rules of Procedure and Evidence” (Pre-Trial Chamber I), No. ICC-01/04-373, 17 August 2007 (notified on 20 August 2007), para. 4.

¹⁶ See the Request, *supra* note 8, para. 24.

¹⁷ See the “Reasons for ‘Decision on the Application of 20 July 2009 for Participation under Rule 103 of the Rules of Procedure and Evidence and on the Application of 24 August 2009 for Leave to Reply’” (Appeals Chamber), No. ICC-02/05-01/09-51 OA, 9 November 2009, para. 9.

¹⁸ *Idem*.

¹⁹ See the Admissibility Challenge, *supra* note 4.

²⁰ See the “Decision on the conduct of the proceedings following Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo”, *supra* note 6, para. 8.

²¹ *Idem*, para. 15.

²² See the Request, *supra* note 8, para. 20.

²³ See *supra* note 14.

²⁴ See ICTR, *The Prosecutor v. Gatete*, Case No. ICTR-2001-61-11bis, “Decision on Amicus Curiae Requests (IBUKA, AVEGA and ICDA)”, 30 June 2008, para. 4; and ICTR, *The Prosecutor v. Kayishema*, Case No. ICTR-01-67-R11bis, “Decision on the International Criminal Defence Attorneys Association for Leave to Appear as Amicus Curiae and Invitation to the Republic of Rwanda to File Submissions”,

18. In this regard, the Legal Representative notes that the Request falls short of referring in detail to the Applicant's expertise. Reference is made only to the "unique[ly] [...] *vantage point of an alleged co-perpetrator*" of the crimes charged against Ms Gbagbo,²⁵ presumably referring to Mr Blé Goudé. The Legal Representative contends that a condition of "*alleged co-perpetrator*" does not suffice *per se* to show that the Applicant can provide useful observations on the topic he seeks to address as *amicus curiae*, i.e. the willingness and ability of Côte d'Ivoire pursuant to article 17 of the Rome Statute to prosecute individuals allegedly involved in the post-election violence in Côte d'Ivoire.

19. In fact, in order to argue the pertinence of the Request, the Applicant only makes implied or express reference to reasons different from those envisaged in rule 103 of the Rules of Procedure and Evidence and in the jurisprudence of the Court to allow *amici curiae* submissions.

20. In particular, the Applicant refers to the potential impact that an admissibility decision in the present case may have on eventual admissibility challenges concerning the case concerning Mr Blé Goudé.²⁶ Relatedly, the Applicant appears to suggest that submitting observations in these proceedings will avoid duplication of observations which may be made in eventual admissibility proceedings in the case against Mr Blé Goudé.²⁷ Lastly, the Applicant expressly calls on Côte d'Ivoire to make public its intentions as to whether it wishes to challenge the admissibility of the case against Mr Blé Goudé.²⁸

18 February 2011, para. 5. See also International Centre for Settlement of Investment Disputes, *Biwater Gauff (Tanzania) Ltd. v. Tanzania*, Case No. ARB/05/22, "Procedural Order No. 5", 2 February 2007, para. 50(a). This document is available at the following address:
https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC1584_En&caseId=C67.

²⁵ See the Request, *supra* note 8, para. 15.

²⁶ *Idem*, paras. 13-14, 23 and 26.

²⁷ *Ibid.*, para. 17.

²⁸ *Ibid.*, para. 25.

21. The Legal Representative submits that none of the arguments referred to in the previous paragraph is relevant to rule on whether the Applicant has the required expertise to serve as *amicus curiae* in the proceedings concerning Ms Gbagbo, and whether said expertise is necessary to resolve any particular topic in the current proceedings.

22. The Applicant's arguments refer instead to the opportunity and convenience of allowing *amicus curiae* observations on the admissibility of the case concerning Mr Blé Goudé. The Legal Representative contends that said observations cannot be made in the present proceedings. At most, said observations may be relevant where and when the admissibility of the case against Mr Blé Goudé is eventually discussed.

23. In this regard, the International Criminal Tribunal for Rwanda have rejected the contention that leave to submit *amicus curiae* observations can be granted on the basis that the Applicant would otherwise be prejudiced by not being heard before the tribunal.²⁹

3. The Applicant's own interests prevent him from servicing the Court as *amicus curiae*

24. The Legal Representative submits that accepting for the sake of argument that no "impartiality" is required from an *amicus curiae*,³⁰ it is obvious that the Applicant cannot be a "friend of the court" if he cannot be perceived as independent from the parties and participants in the case.

²⁹ See ICTR, *The Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-I, "Decision on Amicus Curiae Request by the Kigali Bar Association", 22 February 2008, para. 7.

³⁰ See the Request, *supra* note 8, para. 21. See ICTY, *The Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, "Decision on Interlocutory Appeal by the Amici Curiae against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004, Separate Opinion of Judge Shahabuddeen", para. 15 ("*an amicus curiae is limited to his essential function as a friend of the court, as distinguished from being a friend of the accused*"); and ICTR, *The Prosecutor v. Kayishema*, Case No. ICTR-2005-87-I, "Decision on the Amicus Curiae Request of the Defence of Gaspard Kanyarukiga", 14 September 2007, para. 6 ("*the role of an amicus curiae is not to defend any interests other than to assist the Chamber for the proper determination of a case. This implies that the amicus curiae is not a party to the trial and should therefore remain impartial*"). See also ICTR, *The Prosecutor v. Munyazaki*, Case No. ICTR-1997-36-I, "Decision on the Motion by ADAD (The Organization of ICTR Defence Counsel) for Leave to Appear as Amicus Curiae", 13 December 2007, para. 16.

25. In addition to the jurisprudence mentioned in the Request, the *ad hoc* tribunals have clarified that *amici curiae* must not be “linked” or “affiliated” with any party to the case,³¹ and are required not to “repeat[s] the task undertaken by the [...] Chamber and the parties in their submissions”.³² The only exception to this approach concerns accused persons exercising their right to self-representation. In those cases, the *ad hoc* tribunals have allowed the *amicus curiae* to argue in favour of the interests of a particular party,³³ turning the *amicus* in those cases into an “uninstructed de facto defence counsel”.³⁴ However, even in these cases, the *ad hoc* tribunals have clarified that “[t]he amici do not act as representatives of the Accused at trial, but solely as assistants to the Trial Chamber”.³⁵

26. Other international institutions have similarly ruled that *amici curiae* must be truly independent from the parties in the case at hand.³⁶

27. Most importantly, the independence of the *amicus curiae* has also been taken into account by the Court. Chambers have consistently considered whether those

³¹ See ICTR, *The Prosecutor v. Kayishema*, Case No. ICTR-2001-67-I, “Decision on the Request for Permission to File an Amicus Curiae Brief, International Criminal Defence Attorneys Association (ICDAA) Concerning the Prosecutor’s Request for Referral of the Case of Fulgence Kayishema to Rwanda Pursuant to Rule 11 *Bis* of the Rules”, 6 December 2007, para. 14; ICTR, *The Prosecutor v. Gatete*, *supra* note 24, para. 6; and ICTR, *The Prosecutor v. Kayishema*, *supra* note 24, para. 5.

³² See ICTY, *The Prosecutor v. Gotovina and Markač*, Case No. IT-06-90-A, “Decision on Application and Proposed Amicus Curiae Brief”, 14 February 2012, para. 11. See also ICTY, *The Prosecutor v. Karadžić*, Case No. IT-95-5/18-AR98bis.1, “Decision on Application for Leave to Submit an Amicus Curiae Brief”, 21 September 2012, p. 3.

³³ See ICTY, *The Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, “Order for Further Instruction to the Amici Curiae”, 6 October 2003; ICTY, *The Prosecutor v. Krajišnik*, Case No. IT-00-39-A, “Decision on Momčilo Krajišnik’s Request to Self-Represent, on Counsel’s Motions in Relation to Appointment of Amicus Curiae, and on the Prosecution Motion of 16 February 2007”, 11 May 2007, paras. 17-19.

³⁴ See BOAS (G.), *The Milošević Trial: Lessons for the Conduct of Complex International Criminal Proceedings*, Cambridge, 2007, p. 254.

³⁵ See ICTY, *The Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, “Decision on Interlocutory Appeal by the Amici Curiae against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case”, 20 January 2004, para. 4. See also ICTY, *The Prosecutor v. Krajišnik*, Case No. IT-00-39-A, “Decision on Motion of Amicus Curiae Regarding Appellate Ground of Ineffective Assistance of Counsel”, 20 July 2007, para. 8.

³⁶ See *Aguas Provinciales de Santa Fe S.A., Suez, Sociedad General de Aguas de Barcelona S.A. and InterAguas Servicios Integrales del Agua S.A. v. Argentina*, *supra* note 13, paras. 23 and 32; and *Suez, Sociedad General de Aguas de Barcelona, S.A., and Vivendi Universal S.A. v. Argentina*, *supra* note 13, paras. 13, 15 and 16.

applying for leave to submit *amicus curiae* observations are independent from the parties and/or participants in the relevant proceedings.³⁷

28. By contrast, the Request expressly and impliedly indicates that the Applicant's interests in the resolution of the admissibility challenge concerning the case against Ms Gbagbo are not independent from the Applicant's interests in the resolution of an eventual admissibility challenge concerning the case against Mr Blé Goudé.³⁸

29. In this regard, the Legal Representative agrees with the Applicant that Pre-Trial Chamber II's decision issued in the Kenya situation concerns a different *factual* scenario from the one before this Pre-Trial Chamber.³⁹ However, the Legal Representative submits that the *rationale* of said decision is meant to address scenarios such as the one presented in the Request.

30. Indeed, as stated in the Request,⁴⁰ the Applicant has currently no standing in the proceedings against Ms Gbagbo. However, the Request – as also indicated *supra* – explains that the Applicant's expertise is that of an “*alleged co-perpetrator*”.⁴¹ As a consequence, the Applicant cannot be said to be an “*independent and impartial intervener*” in Ms Gbagbo proceedings, as required by the decision issued in the Kenya Situation.⁴²

31. The Legal Representative further contends that even if the test submitted by the Applicant is followed, *i.e.* whether the *amicus curiae* contribution would assist in

³⁷ See the “Decision on the Applications of Mishana Hosseinioun and Aisha Gaddafi to submit *Amicus Curiae* observations to the Chamber” (Pre-Trial Chamber I), No. ICC-01/11-01/11-49, 2 February 2012, p. 5; and the “Decision on the ‘Application by Lawyers for Justice in Libya and the Redress Trust for Leave to Submit Observations pursuant to Rule 103 of the Rules of Procedure and Evidence’” (Pre-Trial Chamber I), No. ICC-01/11-01/11-153, 18 May 2012 (notified on 21 May 2012), paras. 4 and 6.

³⁸ See the Request, *supra* note 8, paras. 13, 23 and 26.

³⁹ *Idem*, para. 18.

⁴⁰ *Idem*.

⁴¹ See *supra* para. 8.

⁴² See the “Decision on Application for Leave to Submit *Amicus Curiae* Observations” (Pre-Trial Chamber II), No. ICC-01/09-35, 18 January 2011, para. 6.

determining the issue at stake,⁴³ the Applicant does not show how his observations would provide assistance to the Pre-Trial Chamber regarding the admissibility challenge filed in the case against Ms Gbagbo. The mere assertion of an intention to be of service does not suffice to be allowed to make submissions as *amicus curiae*.⁴⁴ Moreover, the parties' and victims' eventual responses to the Admissibility Challenge will provide sufficient assistance to the Chamber regarding the admissibility of the case against Ms Gbagbo.⁴⁵

⁴³ See the Request, *supra* note 8, para. 22.

⁴⁴ See "Decision on application for leave to submit observations under Rule 103 dated 7 November 2008" (Pre-Trial Chamber II), No. ICC-02/04-01/05-342, 10 November 2008 (notified on 11 November 2008), paras. 11-13.

⁴⁵ See the "Decision on the 'Request for leave to submit Amicus Curiae observations pursuant to Rule 103 of the Rules of Procedure and Evidence'" (Pre-Trial Chamber II), No. ICC-01/09-01/11-124, 13 June 2011, para. 8; the "Decision on the 'Request for leave to submit Amicus Curiae observations pursuant to Rule 103 of the Rules of Procedure and Evidence'", *supra* note 14, para. 8; and the "Decision on the Kenya Human Rights Commission's request to file an *amicus curiae* brief" (Trial Chamber V), No. ICC-01/09-02/11-618, 1 February 2013 (notified on 4 February 2013), para. 4. See also the "Decision on the application of 14 September 2009 for participation as an *amicus curiae*" (Appeals Chamber), No. ICC-01/05-01/08-602 OA2, 9 November 2009, para. 11; the "Decision on the motion filed by the Queen's University Belfast Human Rights Centre for leave to submit an *amicus curiae* brief on the definition of crimes of sexual slavery" (Trial Chamber II), No. ICC-01/04-01/07-2823-tENG, 7 April 2011, para. 6; the "Decision on an *Amicus Curiae* application and on the 'Requête tendant à obtenir présentations des témoins DRC-D02-P-0350, DRC-D02-P-0236, DRC-D02-P-0228 aux autorités néerlandaises aux fins d'asile' (articles 68 and 93(7) of the Statute)" (Trial Chamber II), No. ICC-01/04-01/07-3003-tENG, 9 June 2011, para. 54; the "Order on the request to file an *amicus curiae* brief on the defence request for a temporary stay of proceedings and the prosecution's related request" (Trial Chamber IV), No. ICC-02/05-03/09-302, 23 February 2012, para. 5; and the "Second decision on the requests for leave to submit observations under rule 103 of the Rules of Procedure and Evidence" (Appeals Chamber), No. ICC-01/09-01/11-988 OA5, 25 September 2013, para. 12.

4. The Applicant's service as *amicus curiae* does not require access to the confidential documents filed in the case against Ms Gbagbo

32. Lastly, assuming *arguendo* that the Chamber authorises the Applicant to submit observations as *amicus curiae*, the Legal Representative opposes the access requested by Mr Blé Goudé Defence to all the confidential materials annexed to the Admissibility Challenge and supplied to the Legal Representative.⁴⁶

33. The Applicant seeks authorisation to provide general observations as *amicus curiae* on issues of a broad nature, namely “*general observations on the capacity of the judicial system in Côte d’Ivoire and the willingness or, rather, ‘selective’ willingness of the authorities to prosecute crimes arising out of the PEV*”.⁴⁷ The Legal Representative submits that the Applicant need not have access to the documents filed confidentially by Côte d’Ivoire regarding the domestic proceedings against Ms Gbagbo in order to provide the Chamber with this type of observations.

34. International institutions facing similar requests have denied access to confidential documents on the ground that the general type of issues on which natural or legal persons requested authorisation to provide observations as *amici curiae* did not require granting them access to said documents.⁴⁸ Similarly, the *ad hoc* tribunals have granted *amici curiae* access only to the necessary documents for a proper discharge of their *amicus* mandate.⁴⁹

⁴⁶ See the Request, *supra* note 8, para. 27(2).

⁴⁷ *Idem*, para. 16.

⁴⁸ See *Biwater Gauff (Tanzania) Ltd. v. Tanzania*, *supra* note 24, paras. 64-65; and *Suez, Sociedad General de Aguas de Barcelona, S.A., and Vivendi Universal S.A. v. Argentina*, *supra* note 13, para. 25.

⁴⁹ See ICTR, *The Prosecutor v. Kayishema*, Case No. ICTR-01-67-R11-I, “Decision on the Request by Human Rights Watch for Leave to Appear as Amicus Curiae in the Proceedings for Referral of the Indictment against Fulgence Kayishema to Rwanda”, 8 November 2007, p. 5; ICTY, *The Prosecutor v. Šešelj*, Case No. IT-03-67-T, “Decision on Amicus Curiae Motion Seeking Variance of Protective Measures Pursuant to Rule 75”, 6 May 2009, p. 2; and ICTR, *The Prosecutor v. Kayishema*, *supra* note 24, p. 4.

35. Lastly, the Legal Representative reiterates that the Applicant may seek judicial protection of Mr Blé Goudé's interests in the context of the proceedings against the latter, but not within the admissibility proceedings concerning the case against Ms Gbagbo. As noted by the Applicant, both suspects are not proceeded against in the same case.⁵⁰

36. Accordingly, the Applicant should not be granted access to the confidential documents supporting the admissibility challenge filed by Côte d'Ivoire in the case concerning Ms Gbagbo.

FOR THE FOREGOING REASONS, the Legal Representative respectfully requests the Pre-Trial Chamber to dismiss the Request.

A handwritten signature in black ink, reading "Paolina Massidda", with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 9th day of December 2013

At The Hague, The Netherlands

⁵⁰ See the Request, *supra* note 8, para. 14.