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No.: ICC-02/11-01/12
Date: 10 December 2013

PRE-TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. SIMONE GBAGBO

Public

**Prosecution's response to request of Counsel for Charles Blé Goudé's seeking
leave to submit *amicus curiae* observations**

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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1. On 18 November 2013, Mr Nicholas Kaufman ("Applicant")¹ filed a request pursuant to Rule 103(1) to be granted leave to make *amicus curiae* submissions in the context of the admissibility challenge filed by the Republic of Côte d'Ivoire in the case against Ms Simone Gbagbo ("Suspect") ("Application").² According to the Applicant, the proposed submissions will "in principle, touch on Côte d'Ivoire's general willingness to prosecute individuals suspected of involvement in the post-election violence [...] and its ability 'genuinely to prosecute' [Simone Gbagbo]."³
2. While granting an application filed under Rule 103 is a discretionary decision of the Chamber,⁴ the Prosecution submits that the Application should be dismissed.
3. The Applicant does not possess any specific expertise⁵ through which he could assist the Chamber in the "proper determination of the case".⁶ The Applicant submitted the Application in his capacity as counsel for Mr Charles Blé Goudé, a co-accused of Ms Simone Gbagbo, but it appears that he has not communicated with his client or received instructions from him on the matter.⁷ In the absence of any identifiable expertise and/or any communication with and instructions from his client, the Applicant fails to demonstrate that he would be in a position to submit more than his personal views on the willingness or ability of Côte d'Ivoire to prosecute individuals suspected of involvement in the post-election violence. Such personal views are unqualified

¹ ICC-02/11-01/12-16, para.1.

² ICC-02/11-01/12-16.

³ Application, para.12.

⁴ ICC-01/04-01/06-1289 OA11, para.8; ICC-01/05-01/08-602 OA2, para.10.

⁵ As acknowledged by the Applicant, the jurisprudence stipulates that persons who wish to make submissions under Rule 103 must possess specific expertise (Application, para.19). See also ICC-01/09-01/11-124, para.7; ICC-01/09-01/11-49, para.14; ICC-01/09-01/11-84, para.8.

⁶ Rule 103(1).

⁷ Application, para.23.

and would not add any value to other submissions filed by the parties and participants in these proceedings.⁸

4. In addition, even if, *arguendo*, the Applicant was in contact with his client, this would not qualify him to make *amicus curiae* observations in the admissibility proceedings against the Suspect. The Applicant submits that his intervention in the admissibility proceedings is justified because of the similarity of the charges against his client and the Suspect and the need to avoid inconsistencies and contradictions.⁹
5. The Prosecution observes that the authorities of Côte d'Ivoire have not yet announced whether they intend to challenge the admissibility of the case against Mr Charles Blé Goudé before the Court.¹⁰ Therefore, the argument that the admissibility proceedings between the Suspect and those against the client of the Applicant need to be aligned is speculative.
6. In addition, the mere fact that the Applicant and his client may have a legitimate interest in the outcome of the admissibility proceedings against the Suspect does not qualify him to make *amicus curiae* observations. To the contrary, as correctly noted by the Applicant, Pre-Trial Chamber II has ruled that "[t]he core rationale underlying an *amicus curiae* submission is that the Chamber be assisted in the determination of the case by an independent and impartial intervener having no other standing in the proceedings".¹¹ Exactly because of the similarity of the charges against the Suspect and Mr Charles Blé Goudé,¹² the Applicant would have an interest in influencing the admissibility proceedings against the Suspect in favour of his client and therefore not as an independent and impartial intervener.

⁸ ICC-02/11-01/11-533, OA 5, para. 12.

⁹ Application, para.14.

¹⁰ Application, para.26.

¹¹ Application, para.18, quoting ICC-01/09-35, para.6.

¹² Application, paras.14-16.

7. Finally, this case is different from the precedent in the *Bashir* case referred to by the Applicant.¹³ The Suspect is represented by counsel and there is no need to hear a “dissenting voice” through *amicus curiae* observations. Counsel for the Suspect can submit arguments that challenge other views presented by the parties and participants in these proceedings. As a result, the Applicant could merely repeat submissions provided by other parties and participants.¹⁴



Fatou Bensouda, Prosecutor

Dated this 10th day of December 2013

At The Hague, The Netherlands

¹³ Application, para.24, referring to ICC-02/05-01/09-51 OA, 9 November 2009, para.9.

¹⁴ ICC-01/05-01/08-602 OA2, para.11.