

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/12
Date: 17 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

**Decision on “Request for leave to submit *amicus curiae* observations
pursuant to Rule 103(1) of the Rules of Procedure and Evidence”**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Counsel for the Defence

Sylvia Geraghty

Clédor Ciré Ly

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Jean-Pierre Mignard

Jean-Paul Benoit

Others

Nicholas Kaufman

REGISTRY

Registrar

Herman von Hebel

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) issues the following decision on the “Request for leave to submit amicus curiae observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence” (the “Request”), submitted by Nicholas Kaufman as Counsel for Charles Blé Goudé.¹

1. On 29 February 2012, the Chamber issued a warrant of arrest (the “Warrant of Arrest”) for Simone Gbagbo (“Ms Gbagbo”), which was made public on 22 November 2012.²

2. On 19 March 2012, the Registrar notified Côte d’Ivoire of the Warrant of Arrest and requested it to arrest and surrender Ms Gbagbo to the Court.³

3. On 1 October 2013, Côte d’Ivoire filed 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*” (the “Admissibility Challenge”), challenging the admissibility of the case against Ms Gbagbo before the Court.⁴

4. On 15 November 2013, the Chamber issued the “Decision on the conduct of the proceedings following Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo”,⁵ *inter alia* inviting the Prosecutor, the Defence and 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 to

¹ ICC-02/11-01/12-16.

² “Warrant of Arrest for Simone Gbagbo”, ICC-02/11-01/12-1. See also Pre-Trial Chamber I, “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Simone Gbagbo”, 2 March 2012, ICC-02/11-01/12-2-Red.

³ ICC-02/11-01/12-6.

⁴ ICC-02/11-01/12-11-Conf. A public redacted version is also available (ICC-02/11-01-12-11-Red).

⁵ ICC-02/11-01/12-15.

submit observations on the Admissibility Challenge, if any, by 13 January 2013.⁶

5. On 18 November 2013, Counsel for Charles Blé Goudé filed the Request, seeking leave to make submissions 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 [Ms Gbagbo]’ and requesting “access to the confidential annexes accompanying the admissibility challenge as granted to the [OPCV]”.⁷ Counsel refers to the ongoing proceedings before the Court against Charles Blé Goudé (“Mr Blé Goudé”) and submits that “any decision taken with respect to the national proceedings instituted against [Ms Gbagbo] will directly impact on a future admissibility decision concerning [Mr Blé Goudé]”.⁸ Counsel also makes submissions aiming to demonstrate that the previous jurisprudence, which required applicants under rule 103 of the Rules of Procedure and Evidence (the “Rules”) to be independent and impartial or to provide specific expertise, should not prejudice the Request.⁹

6. On 9 December 2013, the OPCV filed its “Response to the request for leave to submit amicus curiae observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence” (the “OPCV Response”),¹⁰ opposing the Request on the grounds that: (i) it does not clearly identify the person suggested to provide observations to the Chamber as *amicus curiae*;¹¹ (ii) it fails to provide any evidence of the expertise of this person on the issues he seeks to address as *amicus curiae*;¹² and (iii) it does not demonstrate the

⁶ *Ibid.*, p. 9.

⁷ Request, paras 2-3, 27.

⁸ *Ibid.*, para. 13, see also para. 23.

⁹ *Ibid.*, paras 18-22.

¹⁰ ICC-02/11-01/12-19.

¹¹ *Ibid.*, paras 9, 10-12.

¹² *Ibid.*, paras 9, 13-23.

independence of said person from the parties and participants in the current proceedings.¹³

7. On 10 December 2013, the Prosecutor filed the “Prosecution’s response to request of Counsel for Charles Blé Goudé’s seeking leave to submit *amicus curiae* observations” (the “Prosecutor’s Response”).¹⁴ The Prosecutor submits that the Request should be dismissed,¹⁵ as Counsel for Mr Blé Goudé does not possess any specific expertise through which he could assist the Chamber in the proper determination of the case.¹⁶ In addition, the Prosecutor submits that “the mere fact that [Counsel for Mr Blé Goudé] may have a legitimate interest in the outcome of the admissibility proceedings against [Ms Gbagbo] does not qualify him to make *amicus curiae* observations”.¹⁷ To the contrary, the Prosecutor argues that Counsel for Mr Blé Goudé does not qualify as an independent and impartial intervener.¹⁸

8. The Chamber notes rule 103(1) of the Rules according to which “a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate”.

9. In the present instance, the Chamber notes that Counsel for Mr Blé Goudé seeks leave to make submissions on facts relevant to the determination of the challenge to the admissibility of the case against Ms Gbagbo. However, the Chamber expects to receive submissions on all relevant matters from the participants as envisaged in rules 58 and 59 of the Rules. The Request does

¹³ *Ibid.*, paras 9, 24-31.

¹⁴ ICC-02/11-01/12-20.

¹⁵ *Ibid.*, para. 2.

¹⁶ *Ibid.*, para. 3.

¹⁷ *Ibid.*, para. 6.

¹⁸ *Id.*

not provide reasons to believe that the submissions proposed would in any way add to these expected submissions. In particular, the Chamber is of the view that Counsel for Mr Blé Goudé's argument that the proposed *amicus curiae* submissions would be presented "uniquely, from the vantage point of an alleged co-perpetrator"¹⁹ is insufficient, as the admissibility of each case must be determined on the basis of the circumstances particular to that case. The Chamber is of the view that any argument to the effect that Mr Blé Goudé may be prejudiced by the determination of the Admissibility Challenge in the present case²⁰ is incorrect, and in any case irrelevant under rule 103 of the Rules.

10. Accordingly, the Chamber is of the view that it is not desirable for the proper determination of the case to grant leave to Counsel for Mr Blé Goudé to make submissions under rule 103 of the Rules. Consequently, also the request for access to confidential documents in the record of the case is rejected.

11. Lastly, the Chamber clarifies that under the rule 103 regime participants are not entitled to file responses to the rule 103(1) application until the Chamber has decided to grant leave in accordance with rule 103(1) of the Rules.²¹ Following the wording of rule 103(2) of the Rules, the parties will have the opportunity to respond to the actual *amicus curiae* submission. Accordingly, the OPCV Response and Prosecutor's Response must be dismissed *in limine*.

¹⁹ Request, para. 15.

²⁰ *Ibid.*, para. 23.

²¹ See, for example, Pre-Trial Chamber II, Decision on Application to Appear as *Amicus Curiae* and Related Requests, 3 February 2010, ICC-01/09-14, para 9; Appeals Chamber, "Decision on 'Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence'", 22 April 2008, IC-C01/04-01/06-1289, para. 8.

FOR THESE REASONS, THE CHAMBER

- a) **REJECTS** the Request;
- b) **DISMISSES** the OPCV Response and Prosecutor's Response.

Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this Tuesday, 17 December 2013

At The Hague, The Netherlands