



Original: English

No.: ICC-02/11-02/11

Date: 28 August 2014

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR V. CHARLES BLÉ GOUDÉ***

Public

**Decision on "Prosecution's Request for Measures under Regulation 101(2) of
the Regulations of the Court"**

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for the Defence

Nicholas Kaufman

Legal Representatives of the Victims

Legal Representatives of the 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

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court” or the “ICC”), responsible for carrying out the functions of the Chamber in relation to the situation in the Republic of Côte d’Ivoire and the cases emanating therefrom,¹ hereby issues the decision on the “Prosecution’s Request for Measures under Regulation 101(2) of the Regulations of the Court” (the “Request”).²

1. On 14 August 2014, the Prosecutor filed the Request in which she asks the Chamber to set conditions for Charles Blé Goudé’s telephone communications and personal visits at the ICC detention unit.³ The Prosecutor submits that on the basis of information contained in three media articles, it is reasonable to conclude that Charles Blé Goudé is in direct or indirect communication with persons in an unauthorised manner, and that there are reasonable grounds to believe that such contact could be used to breach an order for non-disclosure, within the meaning of regulation 101(2)(d) of the Regulations of the Court.⁴ The Prosecutor requests that the Chamber direct the Registrar to (i) actively supervise non-privileged visits to Charles Blé Goudé; (ii) actively monitor his telephone calls consistent with regulation 175 of the Regulations of the Registry; (iii) review the recordings of all non-privileged telephone conversations since 5 May 2014 and report to the Chamber and the Prosecutor; (iv) report to the Chamber and the Prosecutor any visit or telephone conversation that appears to be relevant in the context

¹ “*Décision portant désignation d’un juge unique*”, 16 March 2012, ICC-02/11-02/11-9.

² ICC-02/11-02/11-117-Conf.

³ Request, para. 1.

⁴ *Ibid.*, para. 7. See also ICC-02/11-02/11-117-Conf-Anx1; ICC-02/11-02/11-117-Conf-Anx2; ICC-02/11-02/11-117-Conf-Anx3.

of the Request; and (v) implement any other measures the Chamber deems appropriate in the circumstances.⁵

2. On 20 August 2014, the Defence responded to the Request, stating that the Prosecutor failed to establish reasonable grounds to believe that Charles Blé Goudé could breach a non-disclosure order, within the meaning of regulation 101(2)(d) of the Regulations of the Court.⁶ The Defence submits that this regulation does not permit the Prosecutor to receive any report, and that the Prosecutor's request to receive such information has no legal basis.⁷ It is argued that supervision of non-privileged contacts falls exclusively within the province of the Registrar, and that active monitoring is designed to enable the Registrar to maintain good order in the ICC detention unit.⁸ With regard to the media articles, the Defence states that when it learned of the initiative to set up an email account and a social media page for receiving correspondence, the matter was immediately brought to the attention of the Chief Custody Officer and his deputy at the specific request of Charles Blé Goudé.⁹ According to the Defence, the contents of the emails were synthesised and communicated by the Defence team to Charles Blé Goudé who, however, has not responded to these emails.¹⁰ Finally, the Defence submits that the Request offends the rule of proportionality as the demands constitute an assault on the dignity of Charles Blé Goudé and pay no regard to his right to privacy.¹¹

3. The Single Judge notes regulation 101(2) of the Regulations of the Court and regulations 173, 174, 175, 183 and 184 of the Regulations of the Registry.

⁵ *Ibid.*, pp. 5-6.

⁶ ICC-02/11-02/11-122-Conf-Corr, para. 3 ("Response").

⁷ *Ibid.*, para. 1.

⁸ *Ibid.*, para. 2.

⁹ *Ibid.*, para. 5.

¹⁰ *Ibid.*, para. 5.

¹¹ *Ibid.*, para. 7.

4. Regulation 101(2)(d) of the Regulations of the Court provides that the Prosecutor may request the Chamber to prohibit, regulate or set conditions for contact between a detained person and any other person, with the exception of counsel, if the Prosecutor has reasonable grounds to believe that such contact could be used by a detained person to breach an order for non-disclosure made by a judge.

5. In addition to passive monitoring of all non-privileged telephone calls under regulation 174 of the Regulations of the Registry, active monitoring is provided for in regulation 175 of the Regulations of the Registry, according to which the Chief Custody Officer may monitor calls at random and terminate a call and report to the Registrar in case he or she has reasonable grounds to believe that the detainee or the interlocutor may be attempting, *inter alia*, to breach an order for non-disclosure. In addition, pursuant to the same regulation, the Registrar alone may order that all non-privileged calls of a detained person be actively monitored.

6. Pursuant to regulation 183 of the Regulations of the Registry, all non-privileged visits are conducted within the sight and hearing of staff of the detention unit and monitored by video surveillance. Regulation 184 of the Regulations of the Registry provides for further monitoring of visits upon authorisation of the Registrar in case the Chief Custody Officer has reasonable grounds to believe that the detained person or the visitor may be attempting, *inter alia*, to breach an order for non-disclosure.

7. The Single Judge notes that the Prosecutor does not allege that Charles Blé Goudé has breached any order for non-disclosure,¹² but rather submits that additional measures are necessary to verify if Charles Blé Goudé has

¹² Request, para. 7.

breached any such order or does not, intentionally or inadvertently, breach an order for non-disclosure in the future.¹³

8. In the view of the Single Judge, the available documentation does not provide reasonable grounds to believe that any impropriety has occurred in the context of telephone or other communications of Charles Blé Goudé. The first article indicates that Charles Blé Goudé can be reached at the detention unit only through registered telephone numbers,¹⁴ whereas the second and third article deal with an email address and a social media page set up by what appears to be a group called “*Blé Goudé News Officielles*”, and messages addressed to Charles Blé Goudé through these channels.¹⁵ Even though the third article contains a message allegedly from Charles Blé Goudé,¹⁶ nothing in this documentation provides any indication that Charles Blé Goudé has breached or could breach an order for non-disclosure by the Chamber, in particular bearing in mind the Defence submissions that the Defence has informed the Chief Custody Officer of this social network initiative and that Charles Blé Goudé has complied with the guidance given on this matter.¹⁷

9. Moreover, considering the provisions regulating the passive and active monitoring of telephone calls and visits of detainees at the ICC detention unit as outlined above, the Single Judge is of the view that the Registrar is already in a position to monitor non-privileged telephone calls and visits of detainees, *inter alia* with a view to preventing potential breaches of orders for non-disclosure. Any breaches of orders for non-disclosure or other breaches will be reported to the Presidency.

¹³ *Ibid.*, para. 8.

¹⁴ ICC-02/11-02/11-117-Conf-Anx1.

¹⁵ ICC-02/11-02/11-117-Conf-Anx2; ICC-02/11-02/11-117-Conf-Anx3.

¹⁶ ICC-02/11-02/11-117-Conf-Anx3.

¹⁷ Response, para. 5.

10. In the view of the Single Judge, additional measures which further encroach upon a detainee's communication with others must be weighed against the detained person's right to privacy. In light of the available documentation in the instant case, the Single Judge finds that the potential need for additional measures to verify if Charles Blé Goudé has breached or could breach orders for non-disclosure as requested by the Prosecutor is outweighed by his right to privacy.

11. At the same time, the Single Judge clarifies that this decision is without prejudice to the abovementioned competences that the Registrar may start or continue to exercise with respect to Charles Blé Goudé's visits or telephone calls. The Registrar should also continue providing guidance to the Defence concerning proper ways of communication with Charles Blé Goudé, including on the use of Ringtail.

12. The Single Judge notes the Defence request to reclassify the Request and related litigation as public.¹⁸ The Prosecutor submits that the Request and its annexes are filed as confidential as reference is made to sensitive and confidential information related to the detention conditions of Charles Blé Goudé.¹⁹ The Defence argues that the allegations contained in the Request are made on the basis of material available to the general public through the media and that the conditions pertaining to visiting rights and internet access for detainees at the ICC detention unit are a matter of public record.²⁰

13. The Single Judge notes that the annexes to the Request are media articles which are already in the public domain. In addition, the provisions regulating the conditions of detention in the ICC detention unit, including with regard to visiting and communication rights of detainees, are equally

¹⁸ *Ibid.*, para. 9; ICC-02/11-02/11-119-Conf.

¹⁹ Request, para. 2.

²⁰ ICC-02/11-02/11-119-Conf, p. 3.

accessible to the public. In the view of the Single Judge, neither the Request, nor the Response or the Defence request for reclassification contains any other information which is of a confidential nature. Therefore, the Single Judge is of the view that the Request and the related litigation should be reclassified as public.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Request, and

ORDERS the Registrar to reclassify documents ICC-02/11-02/11-117-Conf; ICC-02/11-02/11-117-Conf-Anx1; ICC-02/11-02/11-117-Conf-Anx2; ICC-02/11-02/11-117-Conf-Anx3; ICC-02/11-02/11-119-Conf; and ICC-02/11-02/11-122-Conf-Corr as “public”.

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



Judge Silvia Fernández de Gurmendi
Single Judge

Dated this Thursday, 28 August 2014

At The Hague, The Netherlands