

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **19/08/2014**

PRE-TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. CHARLES BLÉ GOUDÉ

Confidential Document

CORRIGENDUM

(corrected version of ICC-02/11-02/11-122-Conf filed on 19 August 2014)

Defence response to Prosecution filing ICC-02/11-02/11-117-Conf

Source: Defence for Charles Blé Goudé

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Charles Blé Goudé ("the Suspect") hereby files his response to the *Prosecution's Request for Measures under Regulation 101(2) of the Regulations of the Court* ("the Prosecutor's Request").¹

Submission

1. Even if the Suspect were to have breached an order of non-disclosure – which is totally denied – Regulation 101 of the Regulations of the Court does not permit the Prosecutor to receive a report of "*all information that appears to be relevant to the possible disclosure of information that is confidential*".² The very fact that the Prosecutor seeks information arising out of the Suspect's conversations – a request which has no legal basis unless it is in the context of an investigation of offences against the administration of justice – belies the true nature of the present application. The Suspect suggests that the Prosecutor's Request is a desperate and brazen attempt to bolster her weak case against the Suspect and to hinder his preparations for the confirmation hearing.

2. The supervision of non-privileged contacts under the Regulations of the Registry is within the province of the Registrar alone. The Prosecutor, indeed, admits this where she states: "*the Registry also advised the Prosecution that if the Registrar ordered monitoring pursuant to Regulation 175 of the Regulations of the Registry ("RoR") the existence of such an order and information about the measures taken, if any, would not be provided to the Prosecution*".³ Active monitoring, so it is submitted, is designed to enable the Registrar to maintain good order in the ICC Detention Facility. The Prosecutor is most certainly not entitled to reap fringe benefits from the imposition of such a measure for a tactical advantage or in order to improve her case.

¹ ICC-02/11-02/11-117-Conf.

² *ibid* at paragraph 9(c).

³ *ibid* at paragraph 6.

3. Regulation 101(2)(d) states quite clearly that a restriction may only be placed on contacts if there are "reasonable grounds" to believe that the said contacts could be used to breach a non-disclosure order. The Prosecutor fails to provide reasonable grounds to believe that the Suspect could breach a non-disclosure order. The only facts at the Prosecutor's disposal are a few open source media articles of questionable pedigree.

4. Notwithstanding, the Suspect will address each of the sources cited by the Prosecutor. Annex 1 to the Prosecutor's Request comprises an item of internet gossip dated 15 June 2014 – one of the many internet sources emanating from Côte d'Ivoire. If the Prosecutor had genuinely believed that the Suspect had breached a non-disclosure order of the Court (which she admits she did not),⁴ or was liable to do so as a result of the alleged activity described in the internet article, she would not have sat on her hands for more than a month⁵ before petitioning the Court with the present application. The Prosecutor's Request should thus be rejected *in limine* for lack of diligent prosecution.

5. With respect to Annexes 2 and 3 of the Prosecutor's Request, it is not denied that an email account and a social media page for receiving email correspondence were set up. When the Defence learned of this initiative, at or around 4 August 2014, the matter was brought immediately to the attention of the Chief Custody Officer and his deputy at the Suspect's specific request. Guidance was sought and the Suspect has complied with such guidance. The contents of the Emails in question, which comprise expressions of encouragement and support, were synthesized into two pages of A4 and were communicated by the Defence team to the Suspect. The Defence stresses that after a long period of repressive and illegal

⁴ *ibid* at paragraph 7.

⁵ Becoming aware as the Prosecutor alleges, on 14 July 2014, of the existence of the internet article.

solitary confinement in Côte d'Ivoire, the Suspect is in a fragile physical and mental state. The expressions of support from well-wishers are a genuine source of comfort for him. Out of respect for the Court and the regime in place at the ICC Detention Facility, however, the Suspect has not responded to these Emails.

6. The Suspect has not hidden the existence of the Email account nor of the social media page. As with his activities in Côte d'Ivoire, every act and utterance of the Suspect is in the public domain. He was not involved in any clandestine conspiracy or "common plan". The Suspect suggests that the Prosecutor's imputation of malfeasance in the present instance is symptomatic of her general attitude to the case against him and dictates the spin she puts on her selectively assembled evidence. As she has mischaracterized the purpose of the Email account and social media page, the Prosecutor will similarly attempt to convince the Pre-Trial Chamber, at confirmation, that the Suspect's exercise of the right to free speech was calculated to engender violence. The Defence will prove otherwise.

7. On a final note, the Prosecutor's Request offends the rule of proportionality. As mentioned previously, the purpose of active monitoring is to maintain good order in the ICC Detention Facility and not to benefit the Prosecutor. To this end, any interference with the universally recognized human right to privacy should be tempered by the principles of necessity and proportionality. There is nothing necessary or proportional in the measures requested by the Prosecutor. Her demands constitute an assault on the dignity of the Suspect and pay no regard whatsoever to his right to privacy – in particular the right to intimacy during personal visits permitted pursuant to Regulation 185 of the Regulations of the Registry. The only purpose of the Prosecutor's Request (for which the relief sought is, notably, one month in duration) is to stymie the Defence's preparations for the confirmation hearing due to commence on 22 September 2014.

Conclusion

8. The Prosecutor's Request is a strategically motivated fishing expedition and should, in the circumstances, be **DENIED**.

9. The Suspect repeats his respectful request that the litigation in connection with the Prosecutor's Request be reclassified as public.



Nicholas Kaufman

Counsel for Charles Blé Goudé

Done in Jerusalem, Israel
Tuesday, August 19, 2014